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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1959

## No. 76

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, ET AL., PETITIONERS,

*vs.*

THE STATE OF WASHINGTON ON THE RELATION OF YELLOW CAB SERVICE, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

PETITION FOR CERTIORARI FILED MAY 25, 1959

CERTIORARI GRANTED JUNE 29, 1959

# SUPREME COURT OF THE UNITED STATES

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## Transcript of Pleadings, Orders, Opinions, Judgments, Etc.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

No. 526958

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YELLOW CAB SERVICE, INC., a Corporation, Plaintiff,

vs.

TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION No. 465; GEORGE LANCASTER, its Secretary-Treasurer; and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Defendants.

---

COMPLAINT—Filed September 23, 1958

Comes Now the plaintiff above-named, and for cause of action against the defendants above-named, alleges as follows:

I.

That the plaintiff is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Seattle, King County, Washington; and that it has paid all license fees due and owing.

II.

That the defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as "Defendant International", is an unincorporated association, to-wit: A Union representing individuals employed in the indicated fields and others relating thereto and carries on its activities in King County, Washington; that defendant Taxicab Drivers and Chauffeurs' Local #465, hereinafter referred to as "Defendant Local", is a labor union and unincorporated voluntary asso-

ciation, with its principal place of business at Seattle, King County, Washington, and that it is a constituent part of or affiliated with Defendant International. That Defendant Lancaster is the duly elected and acting Secretary of Defendant Local.

[fol. 2]

III.

That plaintiff has issued and outstanding ..... shares of its Series II Common voting stock with par value of $100.00 per share, and that such stock has been subscribed and paid for by 118 separate and individual Yellow Cab Corporations which are now operating in Seattle, King County, Washington, in the transportation of passengers for hire in the taxicab business; that the plaintiff's Series I Common voting stock is held by Yellow Cab Company, a copartnership.

IV.

That plaintiff is the owner and holder of title to the Yellow color rights as well as the good will attached to the name of "Yellow Cab Company", and the color rights and good will attached to the names "Black and White", "Red Top", and "Checker". That plaintiff is the owner of radio transmission equipment which is operated pursuant to Federal Communications Commission license in the dispatching of Yellow taxicabs in Seattle, King County, Washington; and that plaintiff has issued in its name jointly with each of the said Yellow Cab Corporations license or permit issued pursuant to ordinance of the City of Seattle, King County, Washington.

V.

That plaintiff is engaged, generally, in assisting the 118 Yellow Cab Corporations in their taxicab enterprises by furnishing

1. Telephone answering and radio dispatch services;
2. Office and management personnel;
3. Accounting and bookkeeping services;

4. Sale or rental of space in or about "Yellow" taxicabs for advertising purposes;

5. Help in negotiating insurance.

VI.

That plaintiff is not now nor has it at any time since its organization been engaged in the operation of taxicabs in Seattle, King County, Washington.

[fol. 3]

VII.

That plaintiff hires and employs approximately ten dispatchers who are members of Defendant Local.

VIII.

That effective as of June 1, 1956, plaintiff entered into written contract with Defendant Local relating to hours of employment, wages, and other conditions connected with the employment by the plaintiff of its said employees who are members of Defendant Local; that said contract was to remain in full force and effect until June 1, 1958, and to continue thereafter from year to year unless cancelled or amended and that it is now in full force and effect; and that in the event it is determined that said agreement effective as of June 1, 1956 has been cancelled or amended for any reason, then this plaintiff hereby agrees to execute, conform to and be bound by the provisions and conditions of a standard form of labor contract which Defendant Local has submitted to this plaintiff and to the 118 Yellow Cab Corporations as well as to the competing taxicab operators in the City of Seattle, King County, Washington.

IX.

That plaintiff is the sole lessee of the premises situated at 902 Madison, Seattle, King County, Washington, except for small portions thereof which are subject to sublease granted by the plaintiff.

## X.

That Defendant Local, pursuant to meetings instituted by Defendant Lancaster and under authorization granted by Defendant International, called a strike against the plaintiff on September 16, 1958, and as an incident thereto defendants have caused the picketing of the premises at 902 Madison, Seattle, King County, Washington, and have taken steps to publicize an alleged labor dispute between the Union and all concerned with the Yellow Cab op- [fol. 4] erators that said picketing is made applicable to the plaintiff herein in complete disregard of the fact that the plaintiff has an effective labor contract with the Defendant Local, or in the absence thereof, that plaintiff is willing to sign the contract proposed by Defendant Local and Lancaster and that, therefore, no labor dispute exists as between plaintiff and the defendants. That as a result of the defendants' action, plaintiff's employees have failed or refused to cross the picket line so set up by the defendants.

## XI.

That as a result of said picketing and publicizing of said alleged labor dispute, plaintiff has suffered and will continue to suffer irreparable damage to its business, which damage is difficult to prove and for which plaintiff has no plain, speedy or adequate remedy at law. Said picketing, if allowed to continue, threatens to, and will in all probability, destroy plaintiff's business. An emergency therefore exists and a restraining order should be issued immediately preventing defendants from further picketing or otherwise interfering with, molesting, or in any way injuring plaintiff's business. Such a restraining order should be succeeded by a preliminary injunction restraining defendants and the members and officers of Defendant Local and Defendant International from molesting, interfering with, or in any way injuring, either directly or indirectly, the business of plaintiff, and plaintiff is entitled to have such injunction made permanent upon trial of this case on the merits. Plaintiff has already been damaged by defendants' actions hereinabove alleged in a sum the exact amount of which is at the present time un-

ascertainable. This damage will continue and will increase unless defendants are forthwith restrained.

Wherefore, Plaintiff prays the Court for relief as follows:

1. That the Court immediately issue, without notice, a [fol. 5] temporary restraining order preventing defendants from interfering with, molesting, or in any way injuring, either directly or indirectly, the business of plaintiff by picketing or otherwise, including the use of signs or pickets which would have the effect of preventing the employees of the plaintiff or union employees of other concerns from entering the plaintiff's premises, pending plaintiff's application for a temporary injunction pendente lite.

2. That the Court thereafter, upon hearing as ordered by the Court, issue a temporary injunction preventing defendants from interfering with, molesting, or in any way injuring the business of plaintiff, either directly or indirectly, pending final hearing of this case upon the merits.

3. That upon hearing of this case on the merits, the Court issue a permanent injunction restraining defendants from interfering with, molesting, or in any way injuring the business of the plaintiff, either directly or indirectly, by picketing or otherwise.

4. That the Court award to plaintiff damages in such amount as may be established according to law.

5. For plaintiff's costs and disbursements herein to be taxed.

6. For such other and further relief as to the Court may seem just and equitable.

Little, LeSourd, Palmer, Scott and Slemmons, Attorneys for Plaintiff.

[fol. 6] *Duly sworn to by A. H. Wenck, jurat omitted in printing.*

[fol. 7] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

No. 526958

[Title omitted]

ORDER TO SHOW CAUSE—September 23, 1958

The above-entitled matter coming on to be heard this day in Open Court before the undersigned, one of the Judges of the above-entitled Court, on motion of plaintiff and its Complaint herein, and it appearing that the plaintiff has submitted its Order to Show Cause fixing the time and place for hearing on the matters referred to in the Complaint, and it further appearing that irreparable damage will be done to the plaintiff's business unless the matter is set down for immediate trial, Now, Therefore,

It Is Ordered, Adjudged And Decreed that the defendants above-named be and they hereby are ordered to appear before Department 7 of this Court, Room 828, of the County-City Building, Seattle, King County, Washington, at the hour of 9:30 A.M. on the 29th day of September, 1958, and to remain in attendance and to report to the Department to which this matter may be assigned until hearing thereof, and to show cause why a permanent injunction should not issue in this cause which would prohibit the defendants from picketing the business or operation of the plaintiff, or interfere with, molest or injure the business or property of plaintiff, either directly or indirectly.

Done In Open Court this 23rd day of September, 1958.

H. C. Agnew, Acting P.J. Judge.

[fol. 8] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

No. 526958

[Title omitted]

ANSWER—Filed October 1, 1958

In answer to the complaint herein defendant Taxicab Drivers and Chauffeurs Local Union No. 465 and defendant George Lancaster admit, deny and allege as follows:

I

Admit the allegations of paragraph I.

II

Answering paragraph II said defendants admit that the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is an unincorporated association; admit that defendant Taxicab Drivers and Chauffeurs Local Union No. 465 is a labor union and unincorporated voluntary association, with its principal place of business at Seattle, King County, Washington; admit that said Local is affiliated with said International Brotherhood of Teamsters; admit that defendant Lancaster is the duly elected and acting Secretary of said Local; and deny all other allegations contained in said paragraph.

III

Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph III, IV and V.

[fol. 9] IV

Deny the allegations of paragraph VI.

V

Admit the allegations of paragraph VII.

VI

Answering paragraph VIII said defendants admit that on June 1, 1956, plaintiff entered into a written contract with defendant Local; admit that said contract was to remain in full force and effect until June 1, 1958, and to continue thereafter from year to year unless cancelled or amended; and deny all other allegations of said paragraph.

VII

Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph IX.

VIII

Answering paragraph X said defendants admit that defendant Local called a strike against the plaintiff on September 16, 1958; admit that as an incident to said strike there has been picketing of the premises at 902 Madison Street, Seattle, Washington; and deny all other allegations of said paragraph.

IX

Deny the allegations of paragraph XI.

For a First Affirmative Defense said defendants allege as follows:

I

That the allegations of the complaint fail to state a cause of action.

For a Second Affirmative Defense said defendants allege as follows:

I

Defendant Taxicab Drivers and Chauffeurs Local No. 465 is a voluntary association, organized as a labor union, [fol. 10] with its principal place of business at Seattle.

King County, Washington, and is composed, in part, of members who are employed as taxicab drivers and dispatchers. On behalf of these members Local No. 465 has executed and presently enforces collective bargaining agreements with various companies and corporations in the Seattle taxicab industry.

## II

Prior to 1955, the Yellow Cab Company, a partnership, operated a fleet of over one hundred taxicabs in Seattle. In 1955 and 1956, however, said Yellow Cab Company sold these taxicabs to some of its employees and others. Each purchaser was required to incorporate under the laws of the State of Washington and, further, to execute a conditional sales contract and a certain "agreement". A copy of the conditional sales contract is labeled Exhibit "A" and is attached hereto and by this reference made a part hereof. Under the terms of this contract each purchasing corporation was sold a taxicab, a meter, a radio, a city permit, and four shares of Series 2 common stock in a corporation known as Yellow Cab Service, Inc., the plaintiff herein; said property was to remain the absolute property of the Yellow Cab Company until the payment in full of the purchase price; upon payment in full of the purchase price, title would vest in the purchasing corporation subject, however, "to the terms and conditions of an agreement of even date herewith entered into between the parties hereto and Yellow Cab Service, Inc., a Washington corporation." Said contract further provides that should the purchasing corporation break any of the provisions of the conditional sales contract or any of the provisions of the "agreement of even date with Yellow Cab Service, Inc." then the Yellow Cab Company could repossess the property purportedly sold.

## III

The same day that each purchasing corporation executed [fol. 11] the conditional sales contract described in paragraph II, it also executed a certain "agreement" between the purchasing corporation on the one hand, and the

Yellow Cab Company and plaintiff Yellow Cab Service, Inc. on the other. A copy of this agreement is labeled Exhibit "B" and is attached hereto and by this reference made a part hereof. This agreement provides that the Yellow Cab Company will acquire the controlling shares of plaintiff Yellow Cab Service, Inc.; that it will retain such shares until all the purchasing corporations make all the payments required under all of the conditional sales contracts, at which time such shares will be assigned and transferred to plaintiff Yellow Cab Service, Inc. This agreement further provides that the purchasing corporation will "conform to, and be bound by, uniform rules and regulations" adopted by the Board of Directors of plaintiff Yellow Cab Service, Inc. covering "among other things, but without limitations, rules and regulations relating to the dispatch and traffic control of cabs, the use of taxi stands, the servicing of transportation accounts, display of advertising, and maintenance and care of the Operator's taxicab". This agreement further provides that the purchasing corporation agrees "to conform to and be bound by the union contract provisions relating to the operation of taxicabs in the City of Seattle".

IV

By the terms and conditions of the conditional sales contract, described in paragraph II, and by the terms and provisions of the "agreement", described in paragraph III, plaintiff Yellow Cab Service, Inc. effectively dominates and controls the activities and policies of the one hundred and eighteen purchasing corporations now operating Yellow taxicabs in the City of Seattle. The business of the plaintiff and the business of said purchasing corporations are interrelated and constitute a single enterprise.

[fol. 12]

V

Under date of June 1, 1956, defendant Local No. 465 executed a collective bargaining agreement with the purchasing corporations and plaintiff covering all taxicab drivers and dispatchers employed by said purchasing corporations. This agreement, by its terms, ran from August

1, 1956 to June 1, 1958, and from year to year thereafter unless amended or cancelled, and it provided that either party could open the contract by giving sixty days notice to the other party. More than sixty days prior to June 1, 1958, the purchasing corporations and plaintiff notified Local No. 465 that they intended to cancel said agreement and negotiate a new agreement. Accordingly, said agreement terminated on June 1, 1958.

VI

Following June 1, 1958 representatives of Local No. 465 met and corresponded with representatives of the purchasing corporations and plaintiff in an attempt to arrive at mutually satisfactory terms in a new agreement covering drivers and dispatchers, but such efforts were unsuccessful. On September 16, 1958, Local No. 465 called a strike against the purchasing corporations and plaintiff, and, as an incident to said strike, caused two pickets to peacefully patrol the premises used by plaintiff and said purchasing corporations at 902 Madison Street, Seattle, Washington. The pickets carried signs reading:

"YELLOW CABS
ARE
UNFAIR
TO
TAXICAB DRIVERS LOCAL
UNION NO. 465"

VII

On September 17 and again on September 18, 1958, the [fol. 13] Federal Mediation and Conciliation Service requested the parties to meet with a representative of said Service in an effort to resolve the differences between the parties so that the strike could be terminated. Two meetings were held, but no agreement was reached.

VIII

There existed on September 16, 1958, and there presently exists, a controversy between Local No. 465 and the pur-

chasing corporations and plaintiff relating to the wages, hours and working conditions of the drivers and dispatchers employed by said corporations who are members of Local No. 465.

IX

The strike against the purchasing corporations and plaintiff, and the picketing which is incident thereto, involves and grows out of a labor dispute within the meaning of R.C.W. Chap. 49.32.

For a Third Affirmative Defense said defendants allege as follows:

I

They re-allege, by reference, the allegations of paragraphs I through VIII of the Second Affirmative Defense.

II

The purchasing corporations and plaintiff do an annual gross business in excess of $500,000.00.

III

The purchasing corporations and plaintiff have exclusive franchises entitling said corporations to service the terminals of interstate carriers of passengers and baggage, including the Seattle-Tacoma International Airport, the King Street Railroad Station and the Canadian Pacific Dock. A substantial portion of the annual revenue earned by said corporations is earned by servicing said terminals.

[fol. 14] IV

The purchasing corporations and plaintiff are engaged in an "industry affecting commerce" as those terms are used in the federal Labor Management Relations Act, 29 U.S.C. Sections 141-187.

V

The activities of Local No. 465, described in paragraphs VI, VII and VIII of the Second Affirmative Defense, are

protected activities within the meaning of the Federal Labor Management Relations Act, 29 U.S.C. Sections 141-187.

VI

This court has no jurisdiction of the subject matter of this action.

For a Fourth Affirmative Defense said defendants allege as follows:

I

They re-allege, by reference, the allegations of paragraphs I through VIII of the Second Affirmative Defense.

II

The activities of Local No. 465, described in paragraphs VI, VII and VIII of the Second Affirmative Defense, constitute an exercise of the right of free speech under the provisions of the First and Fourteenth Amendments to the Constitution of the United States and under the provisions of Article I, Section 5 of the Constitution of the State of Washington.

Wherefore, having fully answered the complaint herein, said defendants pray that the complaint be dismissed and that they have judgment for their costs and disbursements herein.

Bassett, Davies & Roberts, Attorneys for Defendants, Taxicab Drivers and Chauffeurs Local Union No. 465 and George Lancaster.

[fol. 15] *Duly sworn to by George Lancaster, jurat omitted in printing.*

[fol. 16] EXHIBIT "A" TO ANSWER

## CONDITIONAL SALES CONTRACT

THIS AGREEMENT made this ..... day of ..... 1955 between YELLOW CAB COMPANY, a partnership, composed of E. ROYCE, B. ROYCE, DORA F. ROYCE, F. ROYCE, Trustee for Mrs. E. M. Royce Dodge, Lloyd S. Acherman, D. N. Newton, W. L. Rothschild, A. H. Wenck, E. G. Wunner and George E. Worster, with principal office located at 902 Madison Street, Seattle, King County, Washington, herein called "First Party", and ....., a Washington Corporation, herein called "Second Party",

WITNESSETH:

That First Party has this day delivered to Second Party the following described personal property:

1. Yellow Cab No. ....., being a ..... automobile. Motor No. ..... SERIAL NO. .....;
2. One (1) taxicab meter;
3. One (1) two-way radio;
4. Seattle Taxicab permit No. .....;
5. Four (4) shares of the Series 2 Common Stock of Yellow Cab Service, Inc.;

under contract of conditional sale, the terms and conditions of which are as follows:

1. The above property is now and shall remain the absolute property of First Party until payment in full of the purchase price therefor, including interest on weekly deferred payments. The purchase price, exclusive of interest, insurance and all other charges is $ .....

2. The Second Party, upon signing this Contract, has paid to First Party on account of the purchase price the sum of $..... receipt of which is acknowledged.

[fol. 17] 3. The balance of the purchase price shall bear interest at the rate of 7.6 percent per annum and shall be

paid in installments of Twenty Dollars ($20.00) per week until the purchase price has been paid in full. Second Party shall have the right at its option to make additional weekly installments in the sum of Twenty Dollars ($20.00) or any multiple thereof. All such payments shall be made to the First Party or its agents at 902 Madison Street, Seattle, Washington, or at such other place or places as may be designated in writing.

4. Upon payment in full of the purchase price, with accrued interest, according to the terms of this instrument, the title to said property shall vest in Second Party, subject always, however, to the terms and conditions of an agreement of even date herewith entered into between the parties hereto and Yellow Cab Service, Inc., a Washington corporation.

5. The above property, while in the possession of Second Party, shall be at the latter's risk, and all loss of, or damage to, said property or any part thereof shall be borne by Second Party; and Second Party further agrees to keep said property insured in accordance with the aforementioned agreement of even date between the parties hereto, and Yellow Cab Service, Inc., with First Party being named as an insured at all times to cover their interests in the property.

6. Second Party shall have the right, at all times while said property is in its possession under the terms of this agreement, to use such property for taxicab purposes. Second Party shall at all times keep the said property in good condition, maintaining the taxicab, radio, and meter in a first class state of repair at Second Party's sole cost and expense.

7. Second Party agrees that it will not remove said property or any part thereof from the City of Seattle, State of Washington without the written consent of First Party, provided, however, that this condition shall not prevent Second Party from carrying on ordinary taxicab operations to points of destination or pickup outside Seattle City Limits.

[fol. 18] 8. Should Second Party violate or break any of the terms, conditions, or stipulations herein stated or any of the terms, conditions and stipulations stated in the agreement of even date with Yellow Cab Service, Inc., then in any such event First Party is hereby authorized and empowered to enter upon the premises where said property may be found and take immediate possession thereof without previous notice or demand and retain all moneys paid hereon as rent for the use of the property during the period of this agreement.

9. Time is of the essence of this Conditional Sales Contract.

10. Possession of the above property was taken by Second Party on the ..... day of ....., 1955.

11. This agreement is in all respects subject to the aforementioned agreement of even date between the parties hereto and Yellow Cab Service, Inc. and a breach of that contract will be considered to be a breach of this contract, and for such purposes said agreement is incorporated herein by this reference.

IN WITNESS WHEREOF, the said parties have hereunto set their hands this ..... day of ....., 1955, in quadruplicate.

YELLOW CAB COMPANY

By .....

.....

By .....

In consideration of First Party's entering into this contract, I hereby guarantee performance of the terms of this contract by Second Party.

[fol. 19] EXHIBIT "B" TO ANSWER

# AGREEMENT

THIS AGREEMENT made this ... day of ....., 1955, between YELLOW CAB COMPANY, a co-partnership composed of E. Royce, Dora F. Royce, E. Royce, Trustee for Mrs. E. M. Royce Dodge, B. Royce, Lloyd S. Ackerman, George E. Worster, D. Newton, W. L. Rothschild, A. H. Wenck and E. G. Wunner, with principal officers located at Seattle, Washington, herein called Partnership, and YELLOW CAB SERVICE, INC., a Washington corporation, herein called corporation, and ..... YELLOW CAB, INC., a Washington corporation, herein called Operator,

WITNESSETH:

WHEREAS, the Partnership is assigning, conveying and transferring to the Corporation certain rights and assets which are necessary or useful in connection with the servicing of taxicab operations in the City of Seattle; and

WHEREAS, the Corporation will act as a service organization to assist the Operator and others acquiring similar rights in carrying on the taxicab business in the City of Seattle; and

WHEREAS, the Operator desires to assume certain responsibilities and obligations in the purchase of a Yellow Cab to be used in carrying on the taxicab business in the City of Seattle;

NOW, THEREFORE,

1. The Partnership agrees as follows:

(a) To acquire all of the capital stock of the Corporation consisting of 2,660 shares, divided into two classes with [fol. 20] 2,000 Series 1 Common Stock without nominal or par value and 660 Series 2 Common Stock with par value of $100.00 per share, and to sell four (4) shares of Series 2 Common Stock to the Operator, with the purchase of each Yellow Cab, at a price not in excess of the par value of such shares of stock.

(b) To assign, transfer and convey to the Corporation all office and shop equipment, yellow color rights as well as the good will attached to the name "Yellow Cab Company", Black and White, Red Top and Checker color rights, as well as the good will attached thereto, radio transmission equipment, Federal Communication Commission license upon approval by said Commission, unexpired insurance, gas, oil and parts inventories, unissued cab scrip, and such other items of personal property as may be useful to the Corporation in its supplying of services to the Operator and others in carrying on the taxicab business in the City of Seattle.

(c) To assign and transfer to the Corporation all of its Series 1 Common Stock outstanding in the name of the partnership, provided that such assignment and transfer shall be made only at such time as the Operator has paid in full all debts and obligations owing by the Operator to the Partnership and all other purchasers acquiring rights to Yellow taxicabs in the City of Seattle have paid in full all of their debts and obligations to the Partnership. The assignment and transfer by the Partnership to the Corporation of all such stock shall be for a consideration not in excess of $1.00. It is the intention of this paragraph that [fol. 21] the Partnership shall divest itself of all Series 1 Common Stock of the Corporation when, and only when, the Partnership shall have received payment in full for all Yellow Cabs and related rights and interests sold to the Operator and to others who have assumed like obligations and responsibilities to the Corporation as the Operator has assumed.

(d) To vote Series 1 Common Stock so as to permit holders of Series 2 Common Stock at their election, to be represented on the Board of Directors of the Corporation by a minority of the directors.

(e) To arrange for written lease with the Corporation covering the use of premises at 902 Madison Street, Seattle, Washington, for the purpose of carrying on a taxicab business in the City of Seattle, with the rental not to exceed that paid by the Partnership in the current use of such premises,

or in the alternative, to arrange for lease or acquisition of other premises suitable for the purpose of carrying on such taxicab business.

(f) To sell to the Operator, subject to contract of conditional sale, taxicab, radio and meter, and to assist in obtaining the transfer of city permit authorizing the operation of a taxicab in the City of Seattle.

2. The Operator agrees as follows

(a) To endorse and pledge the stock of the Corporation acquired from the Partnership and to endorse and pledge all outstanding capital stock of Operator as security for all indebtedness owing by the Operator to the Partnership.

(b) To enter into uniform contract of conditional sale covering the purchase of taxicab, meter and radio, as well as the rights to operate the taxicab in the City of Seattle.

[fol. 22] (c) To conform to, and be bound by, uniform rules and regulations adopted by the Board of Directors of the Corporation for the purpose of assisting in the proper operation of the taxicab business in the City of Seattle, with the use of the colors and with the use of the names Yellow Cab, Black and White Cab, Red Top Cab and Checker Cab, covering, among other things, but without limitation, rules and regulations relating to the dispatch and traffic control of cabs, the use of taxi stands, the servicing of transportation accounts, display of advertising and maintenance and care of the Operator's taxicab.

(d) To conform to and be bound by the union contract provisions relating to the operation of taxicabs in the City of Seattle.

(e) To obtain through the Corporation, and to pay for, insurance for the taxicab it is purchasing from the Partnership, in such forms and amounts and with such type of coverage as the Corporation may direct, with the Partnership and the Corporation, each being named as one of the insured.

(f) To make all payments due the Partnership to the Corporation in accordance with the terms of the contract

of conditional sale entered into by the Operator, and to pay such additional amounts as may be necessary to maintain and operate the Corporation in the interests of the Operator and others engaging in the taxicab business in the City of Seattle, using the colors and the names as set forth herein.

(g) To conform to all of the rules and regulations of the State of Washington, City of Seattle, or other governmental agencies relating to the operation of the taxicab business.

[fol. 23] (h) To maintain the Operator in good standing as a corporation in accordance with the laws of the State of Washington and the United States.

3. The Corporation agrees as follows:

(a) To provide such services as may be desirable to assist the Operator in carrying on the taxicab business in the City of Seattle, including, among other things:

(1) Telephone answering and radio dispatch service;

(2) Office and management personnel;

(3) Accounting and bookkeeping services;

(4) Garage and maintenance service;

(5) Assistance to the Operator in the purchasing of new equipment;

(6) Sale or rental of space in or about the taxicab for advertising purposes;

(7) Negotiate insurance coverage for the Operator, as provided by Section 2(e) hereof.

(b) To permit and license the Operator's use of the name Yellow Cab and the yellow color rights or other name or colors as set forth herein in connection with the furnishing of taxicab service in the City of Seattle, provided the Operator abides by the terms and conditions of this agreement.

4. The parties mutually agree as follows:

(a) That this agreement shall be binding upon the heirs, administrators, executors, successors and assigns of the respective parties.

(b) That each will cooperate with the other in maintaining the present standards of Yellow Cab service in the [fol. 24] City of Seattle.

(c) That each will enter into such further contracts or agreements as may be necessary in carrying out the conditions of this agreement.

(d) That an agreement in substantially the same form as this one is being entered into by the Partnership, the Corporation and other purchasers of rights to operate Yellow Cabs in the City of Seattle.

(e) That the city permit of the Operator shall be applied for in the name of the Operator and the Corporation, jointly, so as to facilitate the proper functioning of the taxicab operation.

(f) That the term of this agreement shall extend for a period of ten (10) years from the date hereof, subject to earlier termination, however, upon the conveyance of rights by the Partnership to the Corporation pursuant to the provisions of Paragraph 1(c) of this Agreement.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first hereinabove written.

Yellow Cab Service, Inc.

By .....
President

By .....
Secretary

Yellow Cab Company,
a Partnership

By .....
Managing Partner and Attorney-in-Fact for All of the Partners of Yellow Cab Company

YELLOW CAB, INC.

By .....
President

.....
Secretary

[fol. 25] The undersigned, being the substantial owner of the outstanding capital stock of ..... YELLOW C. INC., hereby guarantees performance of the duties and obligations of said Corporation as set forth in this agreement.

DATED this ..... day of ....., 1955.

.....

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[fol. 26] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

No. 526958

[Title omitted]

REPLY—Filed October 7, 1958

Comes Now the plaintiff in the above-entitled case, and by way of Reply to the new and affirmative matter contained in the answer of Defendant Taxicab Drivers and Chauffeurs Local Union No. 465, and Defendant George Lancaster, admits, denies and alleges as follows:

By way of reply to said defendants' First Affirmative Defense, said plaintiff denies each and every allegation contained therein.

By way of reply to said defendants' Second Affirmative Defense, said plaintiff admits, denies and alleges as follows:

I.

Replying to Paragraph I of said Second Affirmative Defense, plaintiff admits that Defendant Taxicab Drivers and Chauffeurs Local Union No. 465, is a voluntary association, organized as a labor union, with its principal place of business at Seattle, King County, Washington, and that it is composed, in part, of members who are employed as taxicab drivers and dispatchers, and denies each and every other allegation in said Paragraph contained.

II

Replying to Paragraph II of said Second Affirmative [fol. 27] Defense, plaintiff denies that there was anything "purported" about the sale of taxicabs referred to in said Paragraph, and admits each and every other allegation contained therein.

III.

Replying to Paragraph III of said Second Affirmative Defense, plaintiff admits the same.

IV.

Replying to Paragraph IV of said Second Affirmative Defense, plaintiff denies each and every allegation contained therein.

V.

Replying to Paragraph V of said Second Affirmative Defense, the plaintiff alleges that under date of June 1, 1956, Defendant Local No. 465 executed a collective bargaining agreement with the purchasing corporations and with plaintiff covering all taxicab drivers employed by the former, and all dispatchers employed by plaintiff; that this agreement, by its terms, ran from August 1, 1956 to June 1, 1958, and from year to year thereafter unless amended or cancelled, and it provided that either party could open the contract by giving sixty days' notice to the other party; that more than sixty days prior to June 1, 1958, the purchasing corporations notified Local No. 465 that they intended to

cancel said agreement, but that no such notice was given by plaintiff; further, plaintiff denies each and every other allegation contained in said Paragraph.

VI.

Replying to Paragraph VI of said Second Affirmative Defense, the plaintiff alleges that following June 1, 1958, representatives of Local No. 465 met and corresponded with a five-man negotiating committee appointed by the purchasing corporations in an attempt to arrive at mutually satisfactory terms in a new agreement covering drivers and dispatchers; that on two occasions, representatives of [fol. 28] plaintiff met with representatives of Local No. 465 in the Federal Court House in Seattle, Washington, in an effort to reach agreement through the services of the United States Conciliation Service; that all such efforts were unsuccessful; that on September 16, 1958, Local No. 465 called a strike against the purchasing corporations and plaintiff, and, as an incident to said strike, caused two pickets to peacefully patrol the premises used by plaintiff and said purchasing corporations at 902 Madison Street, Seattle, Washington; that the pickets carried signs reading as alleged in said Paragraph; and plaintiff denies each and every other allegation contained in said Paragraph.

VII

Replying to Paragraph VII of said Second Affirmative Defense, plaintiff admits the same and alleges that these meetings are the only meetings at which representatives of plaintiff met with representatives of defendant Local No. 465 as previously alleged.

VIII.

Replying to Paragraph VIII of said Second Affirmative Defense, plaintiff alleges that there may have existed on September 16, 1958, and there may presently exist, a controversy between Local No. 465 and certain of the purchasing corporations; plaintiff specifically denies that there then existed or now exists any controversy between Local No. 465 and plaintiff relating to the wages, hours and working con-

ditions of the dispatchers employed by plaintiff, and further denies each and every other allegation contained in said Paragraph.

IX.

Replying to Paragraph IX of said Second Affirmative Defense, plaintiff alleges that the strike against certain of the purchasing corporations, and the picketing which is incident thereto, may involve and grow out of a labor dispute within the meaning of R.C.W. Chapter 49.32; how- [fol. 29] ever, plaintiff specifically denies that the strike and picketing as to plaintiff in any way involves or grows out of such a labor dispute, and denies each and every other allegation contained in said Paragraph.

By way of reply to Defendants' Third Affirmative Defense, plaintiff admits, denies and alleges as follows:

I.

Replying to Paragraph I of said Third Affirmative Defense, plaintiff admits denies and alleges as set forth above in its reply to Paragraph I through VIII of said Second Affirmative Defense.

II

Replying to Paragraph II of said Third Affirmative Defense, plaintiff denies each and every allegation contained therein.

III

Replying to Paragraph III of said Third Affirmative Defense, plaintiff alleges that plaintiff holds, for the benefit of its stockholders, including the purchasing corporations, either directly or indirectly, certain rights as to the servicing of terminals of interstate carriers of passengers and baggage, including the Seattle-Tacoma International Airport, the King Street Railroad Station, and the Canadian Pacific Dock; plaintiff denies each and every other allegation contained in said Paragraph.

IV.

Replying to Paragraph IV of said Third Affirmative Defense, plaintiff denies each and every allegation contained therein.

V.

Replying to Paragraph V of said Third Affirmative Defense, plaintiff denies each and every allegation contained therein.

VI.

Replying to Paragraph VI of said Third Affirmative Defense, plaintiff denies each and every allegation contained therein.

[fol. 30] By way of reply to Defendants' Fourth Affirmative Defense, plaintiff admits, denies and alleges as follows:

I.

Replying to Paragraph I of said Fourth Affirmative Defense, plaintiff repeats the admissions, denials, and allegations made with respect to Paragraph I through VIII of the Second Affirmative Defense.

II.

Replying to Paragraph II of said Fourth Affirmative Defense, plaintiff denies each and every allegation therein contained.

WHEREFORE, plaintiff having fully replied to the Answer of the Defendants herein, plaintiff prays that it have and recover judgment as requested in its Complaint herein.

Little, LeSourd, Palmer, Scott & Slemmons, Attorneys for Plaintiff.

*Duly sworn to by A. H. Wenck, jurat omitted in printing.*

[fol. 31] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 34929

STATE OF WASHINGTON ex rel. YELLOW CAB SERVICE, INC., a corporation, Plaintiff and Relator,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 465; and GEORGE LANCASTER, Its Secretary-Treasurer, Defendants and Respondents,

and

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, HONORABLE LLOYD SHORETT, Judge, Respondent.

APPLICATION FOR ALTERNATIVE WRIT OF MANDATE TO REQUIRE THE SUPERIOR COURT TO ASSUME JURISDICTION ON RELATOR'S APPLICATION FOR AN INJUNCTION—Filed October 20, 1958

Comes Now the plaintiff and relator above named and hereby applies for and prays that an alternative writ of mandate issue herein, directed to the Honorable Lloyd Shorett, Judge of the Superior Court of the State of Washington for King County, in Cause No. 526958, entitled "Yellow Cab Service, Inc., a Corporation, Plaintiff, vs. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Taxicab Drivers and Chauffeurs Local Union No. 465; and George Lancaster, its Secretary-Treasurer, Defendants," commanding him to file an answer to such alternative writ of mandate [fol. 32] within ten (10) days from the date hereof, and thereafter to appear before a department of the above entitled Court at the earliest available date for a hearing thereon.

This application is based on the facts set forth in the affidavit of A. H. Wenck, President of plaintiff-relator, which is attached hereto.

Little, LeSourd, Palmer, Scott & Slemmons, Attorneys for Plaintiff-Relator.

15th Floor, Hoge Bldg., Seattle 4, Washington.

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[fol. 33]

AFFIDAVIT OF A. H. WENCK IN SUPPORT OF APPLICATION FOR ALTERNATIVE WRIT OF MANDATE TO REQUIRE THE SUPERIOR COURT TO ASSUME JURISDICTION OF RELATOR'S APPLICATION FOR AN INJUNCTION

State of Washington,
County of King, ss.:

A. H. Wenck, being first duly sworn, on oath deposes and says:

That he is the President of the plaintiff-relator and that he makes this affidavit in support of the application of the plaintiff-relator for an alternative writ of mandate, to which this affidavit is attached, and states as follows, to-wit:

I.

That the plaintiff-relator is a corporation organized under the laws of the State of Washington, and has paid all license fees due and owing.

II.

That the respondent Taxicab Drivers and Chauffeurs Local No. 465 is a labor union doing business in Seattle, [fol. 34] Washington, and that the respondent Lancaster is the Secretary-Treasurer of said respondent local.

III.

That a majority of the shares of stock of the plaintiff-relator is presently owned by the Yellow Cab Company, a co-partnership, which no longer operates taxicabs, having adopted a plan of liquidation and sale hereinafter described; that a minority of its shares of stock is issued

separately in the names of 118 individual Yellow Cab Corporations more particularly hereinafter referred to; and that on the final liquidation of the partnership all of its shares will be turned over to the 118 corporations, separately, in the proportion of their ownership of cabs, for the nominal consideration of $1.00, whereupon the said 118 corporations will own all of the shares of stock of the plaintiff-relator.

IV.

That the plaintiff-relator is the owner and holder of title to the Yellow color rights as well as the good will attached to the name of "Yellow Cab Company"; that plaintiff-relator is the owner of radio transmission equipment which is operated pursuant to Federal Communications Commission license in the dispatching of Yellow taxicabs in Seattle, King County, Washington; and that plaintiff-relator has issued in its name, jointly with each of the said Yellow Cab Corporations, a license or permit issued pursuant to ordinance of the City of Seattle, King County, Washington.

V.

That plaintiff-relator is engaged, generally, in assisting the 118 Yellow Cab Corporations in their taxicab enterprises by furnishing to them on a non-profit basis the following:

a. Telephone answering and radio dispatch services;

[fol. 35] b. Office and management personnel;

c. Accounting and bookkeeping services;

d. Sale or rental of space in or about "Yellow" taxicabs for advertising purposes;

e. Help in negotiating insurance.

VI.

That plaintiff-relator is not now nor has it at any time since its organization been engaged in the operation of taxicabs in Seattle, King County, Washington.

VII.

That plaintiff-relator hires and employs approximately ten dispatchers who are members of said respondent local.

VIII.

That the plaintiff-relator in its action in the Superior Court asserted that a union labor contract with the respondent local was and is in full force and effect, and that no labor dispute exists, and that, therefore, the picketing hereinafter referred to was and is unlawful.

IX.

That the respondent local denied such assertion of the plaintiff-relator, asserting that a labor dispute existed, and that the picketing, therefore, was lawful.

X.

That in addition thereto, by way of affirmative defense, the respondent local challenged the jurisdiction of the Court upon the ground that the controversy was within the exclusive jurisdiction of the National Labor Relations Board.

XI.

That at the conclusion of a trial, including the taking of the testimony of witnesses and the introduction of numerous exhibits, the respondent Judge Shorett sustained the [fol. 36] challenge of the respondent local to the jurisdiction of the Court, upon the ground asserted by the respondent local, and, in support thereof, made an oral finding that the plaintiff-relator and said 118 separate Yellow Cab Corporations, 119 corporations in all, were, in fact, one entity, and that, therefore, the gross revenues of all of said corporations should be lumped together for the purpose of determining whether the National Labor Relations Board had jurisdiction of the controversy. That respondent Judge further found that the National Labor Relations Board had announced, by a press release dated July 22, 1958, finalized in a release dated October 2, 1958, that it would assert jurisdiction over taxicab companies doing a gross annual busi-

ness of $500,000. That the respondent Judge also made an oral finding that the operations of said 119 corporations involved or affected interstate commerce sufficiently to vest jurisdiction in the said National Labor Relations Board. That a copy of the transcript of the oral decision of respondent Judge is attached hereto and marked Annex "A".

XII.

That the facts upon which the lower Court found that said 119 corporations should be treated as one entity are not in substantial dispute, and may be summarized as follows:

a. That the Yellow Cab Company, a co-partnership, had been operating cabs in the City of Seattle for many years until 1956, at which time it entered upon a program of liquidation of its business and the sale of its cabs and other facilities, including its cab permits from the City of Seattle, to said 118 separate cab operating corporations under conditional sales contracts providing for payments to be made over a period of years, and that, as of this date, an average of approximately 30% of the purchase price under [fol. 37] each conditional sales contract has been paid by the owners of said 118 corporations, and that few, if any, of said 118 corporations are presently in any substantial default in the performance of said conditional sales contracts.

b. That as a part of said plan of sale and liquidation, the said Yellow Cab Company, the plaintiff-relator herein and the said 118 corporations entered into a form of agreement generally referred to as the Tripartite Agreement, under which, among other things, said 118 corporations agreed to conform to the provisions of the labor contract then in effect, to comply with all laws, ordinances and regulations of the state and municipal bodies and to comply with other standards relating to the operating of their cabs to maintain the quality of Yellow Cab Service.

c. That as a part of said program of liquidation and sale, the plaintiff-relator, to-wit, Yellow Cab Service, Inc., was organized to provide certain services to the owners of

said 118 corporations, the operations of which said service company are similar in all material respects to those of the Farwest Cab Company, servicing 100 cabs, and the Gray Top Cab Company, servicing 49 cabs, bearing the colors and insignia of Farwest and Gray Top cabs, respectively. These are the principal cab companies operating in competition with the Yellow Cabs in Seattle.

d. That said program of liquidation and sale of Yellow Cab Company was presented to the full membership of the City Council of the City of Seattle at a meeting duly called for that purpose, and the transfer of some 120 cab permits to said 118 cab corporations was approved by said City Council, and that each of said 118 corporations is operating its own cab or cabs under its own separate permit or permits; that representatives of respondent local appeared [fol. 38] and protested the action by the City Council.

e. That the plaintiff-relator has a board of five directors, three of whom represent the partners of the Yellow Cab Company, and two of whom represent the owners of the said 118 corporations.

f. That none of the partners of the Yellow Cab Company, none of the officers of the plaintiff-relator, none of the three representatives of the Yellow Cab Company serving as directors upon the board of the plaintiff-relator, are officers, directors or stockholders in any of said 118 cab operating corporations.

g. That none of the officers, directors or stockholders of any of the said 118 corporations are officers, directors or stockholders in any of the other of said 118 corporations, with one or two exceptions where more than one cab corporation is owned by the same individual.

h. That among the service functions performed by the plaintiff-relator for the benefit of the said 118 corporations is that of handling their accounting; that each of said corporations regularly deposits with the plaintiff-relator the receipts from the daily operation of its cabs; and that the plaintiff-relator, out of the gross receipts deposited with it by each cab company, pays for said cab company the wages of its respective employee driver or drivers; that

separate accounts are kept for each of said 118 companies, each reflecting separate credits or debits from the profits or losses, as the case may be, in the operation of its separate cabs.

i. That regular and special meetings of the owners of said 118 companies are held periodically, at which meetings matters of common concern are discussed and general policies decided; that an operations committee has been appointed by this group of owners to handle matters between [fol. 39] such meetings.

j. That the operations committee, representing the said 118 companies, has met regularly to discuss operating conditions and the issuance of rules and regulations pertaining thereto of common interest to all, including the disciplining or discharge of drivers who have been found to be drinking on the job or guilty of reckless driving or otherwise failing to live up to the standards required under the provisions of the Tripartite agreement above referred to, and that from time to time bulletins and other notices relating to such rules and regulations are posted upon the bulletin board of the plaintiff-relator.

k. That the personnel director employed by the plaintiff-relator regularly attends such meetings of the operations committee and himself, in said capacity, frequently disciplines or discharges drivers upon the recommendations of said operations committee, having no independent power or authority of his own to do so. That the bulletins or other notices posted upon said bulletin board are frequently signed by the president of the plaintiff-relator.

l. That the owner of each of said 118 corporations has the right to hire and discharge his own employees and determine the hours which the owner-operator will drive and the shifts which he will drive, although, as a general practice, the personnel manager quite frequently, upon the request of the owner-driver, will hire driver employees and, upon the owner's request or the recommendation of the operations committee, will frequently do the discharging, although said personnel director has no independent power or authority of his own to hire or fire, except as directed; pro-

vided, however, that there is a rule in effect established by the 118 companies that no owner will change his shift without giving four days' notice to the driver affected.

[fol. 40] m. That shortly after the initiation of the plan of liquidation and sale of Yellow Cab Company the then existing labor contract expired; that a new contract was entered into on June 1, 1956, after negotiations in which the owners of the 118 taxicab corporations met with representatives of the respondent local through a committee consisting of some 25 owner-operators; that said contract was signed by each of the separate taxicab corporations for itself and with respect to its own employee or employees, and was also signed by plaintiff-relator with respect to its dispatcher employees alone. That plaintiff-relator, in transmitting the contract dated June 1, 1956, advised the respondent local in writing that it had signed the contract solely on its own behalf and had no authority to obtain or require the signatures of any of the then 117 corporations; that 107 of the same had executed the contract on behalf of each of the same; and that it was the responsibility of the respondent local to obtain the remaining signatures.

n. That on or about March 28, 1958, nearly all of the said 118 corporations served written notice of termination of said contract upon said respondent local, effective as of May 31, 1958; that plaintiff-relator signed the letter of transmittal but did not itself give notice of termination of the contract of June 1, 1956, but, in lieu thereof, continued to perform and make payments in accordance with the provisions of said contract, and has continued so to do until the picketing hereinafter referred to commenced.

o. That following such notice of termination by the 118 taxicab corporations, at the request of the respondent local and pursuant to a suggestion made by a Superior Court Judge in another, earlier proceeding between many of said taxicab corporations and respondent local, the owners of [fol. 41] the 118 corporations met with representatives of respondent local through the instrumentality of a committee of five members; that said committee was authorized

only to present the views of the owners of said corporations and to determine the position of the respondent local, but had no authority in any way to bind the owners of said 118 corporations; that this fact was at all times made clear to representatives of respondent local.

p. That an estimated 20 to 30 of the 118 cab companies presently have a labor dispute with the respondent local involving the question of single shifting, the dispute being that said 20 or 30 owners insist upon their right to operate their own cabs without employing any employee drivers, whereas the respondent local insist that all of them must employ union cab drivers to work an additional shift each day they operate their respective cabs.

q. That 19 of the remaining cab owners have signed the form of agreement tendered by respondent local, which is the same form of contract which said respondent local has entered into with the other major cab operators in Seattle, thereby agreeing to employ members of said respondent local to drive their cabs in accordance with the terms of said contract; that additional cab owners have indicated their willingness to do likewise; that plaintiff-relator has similarly signed said form of agreement with respect to its dispatcher employees; that respondent local returned the signed contract tendered to it by plaintiff-relator and the 19 taxicab corporations referred to above, stating that it was unwilling to enter into a contract with them unless plaintiff-relator would take action to compel all 118 taxicab corporations to enter into the same contract, despite the fact that the operations of the 20 to 30 of the Yellow Cab Corporations using a single shift involved different operat- [fol. 42] ing conditions; that certain of the remaining taxicab owners continue to have a labor dispute with respondent local involving certain terms of the proposed agreement.

## XIII.

That the facts upon which the Trial Court held that interstate commerce was substantially involved or affected are not in dispute and are as follows:

a. That the gross revenue received by the plaintiff-relator from all of said 118 corporations from July 1, 1957, through June 30, 1958, was $1,429,914.02, and that the average for the same period for each of the 120 cabs owned by the 118 corporations is $11,915.95.

b. That as a part of the plan of liquidation of Yellow Cab Company the plaintiff-relator has acquired rights under certain written or oral contracts with the railroad companies operating out of King Street and Union Stations in the City of Seattle, with the Seattle-Tacoma Airport, with Boeing Field and with the Canadian Pacific dock, whereby Yellow Cabs have the exclusive right to pick up passengers arriving at said railroad stations, airports and steamship dock, although said written and oral agreements do not give Yellow Cabs exclusive rights to discharge passengers planning to depart from said railroad stations, airports and dock.

c. That the plaintiff-relator has a coupon system arrangement with the railroads operating at said railroad stations in connection with through passengers who wish to be transferred by cabs from said railroad stations to the Canadian Pacific dock, and that the only records it has to show the volume of traffic from said railroad stations is for the coupon payments received from such service, and that for the period from July 1, 1957, through June 30, 1958, [fol. 43] the gross receipts were $1,436.55; that this does not include cab receipts for passengers picked up at railroad stations and delivered to points within the City of Seattle, nor does it include the revenues from cabs traveling from points within the City of Seattle to said railroad stations in competition with other cab companies; that all revenues from service to and from railroad stations and the dock represent a very small percentage of the gross revenues of cab operations in the City of Seattle and are steadily diminishing, and that there is no way of estimating the percentage or amounts thereof.

d. That the gross revenue received from cab operations from the Seattle-Tacoma Airport from July 1, 1957, through June 30, 1958, is the sum of $141,460.80; that this sum does not include revenues for cabs delivering passengers to said

airport; but that it is estimated that such revenues would approximate only 30% of the aggregate revenues to and from said airport, because of the competition of other cab companies.

e. That the gross revenue received from cab operations from Boeing Field from July 1, 1957, through June 30, 1958, is the sum of $14,601.60; that this sum does not include revenues for cabs delivering passengers to said airport; but that it is estimated that such revenues would approximate only 30% of the aggregate revenues to and from said airport, because of the competition of other cab companies.

f. That the maximum aggregate revenues from such services to and from railroads, airports and the Canadian Pacific dock, based upon available figures and estimates, is $202,880, or 14.19% of the aggregate revenues received; that this is not an accurate figure, for the reason that a substantial number of the passengers riding cabs to and from the airports and railroad stations are passengers who are merely going to and from the airports or railroad sta- [fol. 44] tions for purposes other than traveling to some other state or country.

g. That in addition thereto a substantial number of passengers picked up at the railroad stations and airports, particularly at Boeing Field, where only West Coast Airlines operates, originate at places within the State of Washington.

h. That in the regular course of business no Yellow Cabs operate across state lines or international borders, the exception being exceedingly rare, perhaps, and not oftener than once a year in an extraordinary case; and that neither the plaintiff-relator nor any of the 118 corporations own any property or facilities outside of the State of Washington; and that their business operations are confined almost exclusively to driving cabs within the City of Seattle and King County.

i. That the operations of the plaintiff-relator and the said 118 cab corporations have not been subject and are not subject to the regulations of the Interstate Commerce Commission or any other agency of the Federal govern-

ment, excepting only as to the wave band license issued by the Federal Communications Commission in connection with the operation of their cab radios.

## XIV.

That the plaintiff-relator has no plain, speedy or adequate remedy by appeal, for many reasons, including the following:

a. That on September 16, 1958, respondent local began picketing the premises of plaintiff-relator at 902 Madison Street in Seattle, Washington, and since that date has maintained pickets carrying signs reading:

"Yellow Cabs are unfair to Taxicab Drivers Local Union No. 465." That said signs fail to indicate to the pub- [fol. 45] lic or to plaintiff-relator's employees that respondent local has no labor dispute with plaintiff-relator or any of the 118 corporations which have signed or indicated their willingness to sign the proposed form of contract.

b. That the pickets and the picketing signs carried by them have resulted in the failure of the dispatchers employed by the plaintiff-relator to report for work on the instructions of the respondent local.

c. That some of these dispatchers, who are highly trained and experienced men, being out of work, have sought and obtained other employment, and others are likely to do so.

d. That union employees of other companies have failed and refused to go through the picket lines, including, among others, employees of companies requested to repair the plaintiff-relator's power plant, to make delivery of advertising signs and to perform other service and delivery operations.

e. That none of the employees of any of the 118 independent cab corporations have reported for work, resulting in substantially reduced operations both of the plaintiff-relator and of the said 118 corporations.

f. That as a result of the foregoing considerable delays on the part of customers seeking cab service have resulted,

to the damage both of the plaintiff-relator, the 118 corporations and the general public.

g. That at this time it is impossible to estimate the damage suffered by the plaintiff-relator, the 118 corporations and the general public as a result of such curtailed operations, and that the amount of such incalculable damage will continue and increase so long as the picketing is continued on the plaintiff-relator's premises.

h. That the respondent local has indicated that such [fol. 46] picketing will continue indefinitely, unless enjoined or unless plaintiff-relator will compel all 118 corporations to sign the proposed form of contract, which said plaintiff-relator has no right or power to do.

i. That time is of the very essence of this matter, since continued picketing may put the plaintiff-relator and all of the 118 cab companies out of existence, thereby diminishing competition, and also injuring the general public.

/s/ A. H. Wenck

Subscribed and sworn to before me this 17th day of October, 1958.

/s/ Marjorie S. Lightner, Notary Public in and for the State of Washington, residing at Seattle.

(Notarial Seal)

[fol. 47] ANNEX "A" TO AFFIDAVIT OF A. H. WENCK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

No. 526958

YELLOW CAB SERVICE, INC., Plaintiff,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,
Defendants.

ORAL DECISION

Heard Before: THE HONORABLE LLOYD SHORETT.

October 9, 1958

The Court: Gentlemen, you know, if this was a case of first impression, if we didn't have any authority on anything, I would immediately be willing to declare that interstate commerce stops when somebody gets off an airplane or a train and that anything that happened thereafter is not connected sufficiently with interstate commerce to give the Federal Government any authority under the commerce clause. But, we all know that when Washington became a state we entered into a compact under which we agreed that the Constitution and laws of the United States would be the supreme law of the land. I suppose each one of us judges is bound to follow that.

[fol. 48] I have no right to strike out in a new direction merely because I might disagree with what the ultimate court has said in this regard.

I feel that the showing here is clear that this enterprise is one which affects interstate commerce.

Now, if you consider that there are $202,000.00 of business done with the railroad stations, steamships and air ports, which does not include those fares where a person is taken to a hotel or a home from the railroad station and which does not exclude, of course, those cases where a

person has been in intrastate commerce before taking a taxi, nevertheless taking the $202,000.00 figure as probably a fair estimate, considering everything, it would mean that about fourteen per cent of the gross income of this enterprise comes from interstate and foreign commerce sources.

Then we have an added feature here which seems to be unique in that the taxicab company acts as a direct link in interstate and foreign commerce at times in transferring passengers from railroad trains to steamships or vice versa. That, of course, is a very small amount of the business.

I believe I should find that interstate commerce is affected by the operations of the 118 small corporations and the plaintiff.

That, however, does not dispose of this case.

The next thing I think we should inquire into is the relationship between the plaintiff corporation and these 118 small corporations. Now, to my mind that plaintiff corporation is organized just for two purposes: One, for security to the partnership in the sale of the taxicabs; give them assurance they will ultimately collect their money. Two, for service to the Yellow Cab corporations; 118 corporations to be of such service as it can be.

[fol. 49] I believe that it is really, in fact, the alter-ego of all these 118 corporations, and that it acts for them and it is part of their operation. Whether we were viewing it under state law or Federal law, I would feel inclined to say that this is, in essence, one operation.

Now, if it is one operation there are many labor disputes unsettled. There is no need to go over the evidence in regard to the 118 corporations and their disagreements with the union on many, many features.

At this time I will also make a finding that at this time there is no effective contract between the plaintiff and the union inasmuch as this notice given by the plaintiff—I haven't the date here; it is one of the letters, one of the exhibits—I think a fair interpretation of that letter is that this two-year contract is going to end and we want some further negotiations before we sign up again.

Now, under those circumstances we have a dispute, if I am correct in my findings, which affects interstate commerce. We have one within the amount required by the

National Labor Relations Board for it to take jurisdiction; we have a type of industry which that Board, under its press releases, would consider one within its jurisdiction; and we have an enterprise or operation, even though it is composed of 119 corporations, which is in essence just one business.

Perhaps I better comment on a thing or two there. Two of the owners of these 118 corporations are on the Board of [fol. 50] Directors. Ordinarily they actually assert control of the plaintiff corporation, use it for their own purposes. It is true that these partners could control the corporation through its Board of Directors if all three would be present. The evidence is they never have yet.

The dispatchers and expenses, salaries of the plaintiff corporation are all charged to these owners. They are just working for the owners in that regard. The owners of the corporation have pledged their stock in the plaintiff corporation and also the stock in their individual corporations for payment for their cabs, although none of them have yet paid for their cabs.

All of these cabs are the same color to a person on the street; they all are yellow cabs.

The accounting and bulletins and all of that office work is all done together. Discipline is provided for under the contract. There is also the requirement that local laws be obeyed.

After all, this plaintiff corporation is just to secure the partnership financially and then to do what these 118 men want to do. It is part of their business. It ought to be considered as one enterprise.

I don't mean that they must necessarily agree on someone to deal with the union or some committee, but they did appoint a negotiating committee and they worked together there. Perhaps they have no authority to sign them up.

But, when we consider these decisions of the National Labor Relations Board I think if there is an unfair labor practice here that that Board should have jurisdiction.

Turning to the language in the Guss case, the whole area [fol. 51] has been preempted by the Federal Government and there is nothing left. If the Federal Government doesn't regard it as an unfair labor practice then there isn't any unfair labor practice.

You gentlemen may have violent disagreements with these findings or with the reasons I give for arriving at my conclusions. I feel a little better in this case than I do in some cases because I realize that financially either side is able to take this matter right up to the Supreme Court and get a decision on it.

That, however, will be my decision, gentlemen.

Any questions?

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[fol. 62] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

ORDER GRANTING ALTERNATIVE WRIT OF MANDATE—
October 20, 1958

Upon the reading and filing of the affidavit of A. H. Wench on behalf of the plaintiff relator, Yellow Cab Service, Inc., for an alternative writ of mandate to be issued by this court directed to the Honorable Lloyd Shorett as Judge of the Superior Court of the State of Washington for King County, from which it appears that the honorable judge refuses to take jurisdiction in this cause and grant an injunction against the defendants and respondents herein to prevent them from picketing the premises occupied by the plaintiff relator at 902 Madison Street, Seattle, King County, Washington, and it appearing to the satisfaction of the court from said affidavit that the plaintiff relator herein is entitled to have the said court take and assume jurisdiction and try the cause on its merits, and it further appearing that an alternative writ should issue and that [fol. 63] the plaintiff relator has no plain, speedy or adequate remedy in the ordinary course of law,

It Is Hereby Ordered that an alternative writ of mandate in the due form of law be issued under the seal of this court addressed to the Honorable Lloyd Shorett, requiring him to assume jurisdiction in this cause and to determine the case on its merits, or that he show cause before this court in the city of Olympia, Thurston County, state of

Washington, *En Banc* on the 13th day of ~~October~~ November, 1958, at the hour of 9 o'clock A. M.m. of said day why he has not done so.

The Clerk of the Supreme Court is hereby directed to issue said alternative writ of mandate.

Dated this 20th day of October, 1958.

Matthew W. Hill, Chief Justice.

Presented by: Warren R. Slemmons, Of Attorneys for Plaintiff, Relator.

Opening Brief Filed October 20, 1958.

Respondent Brief to be served and filed on or before November 1, 1958.

Reply Brief to be served and filed on or before November 8, 1958.

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[fol. 64]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

ALTERNATIVE WRIT OF MANDAMUS—October 20, 1958

To: THE HONORABLE LLOYD SHORETT, Judge of the Superior Court of the State of Washington for King County. Greeting:

Whereas, it manifestly appears by the verified affidavit of A. H. Wenck on behalf of the plaintiff relator, Yellow Cab Service, Inc., that you, the Honorable Lloyd Shorett, Judge of the Superior Court of King County, State of Washington, have refused to take jurisdiction for the purpose of determining in this cause whether a permanent injunction should issue against the defendants and respondents herein; and

Whereas, a copy of the affidavit referred to above is attached hereto; and

Whereas, there is not a plain, speedy and adequate remedy in the ordinary course of law; and

Whereas, by an order of this court duly given and made in the above entitled action on the 20th day of October, 1958, it was ordered that a writ of mandamus should issue to you,

[fol. 65] Therefore, we do command you that immediately after the receipt of this writ you do take and assume jurisdiction in said cause for the purpose of determining the case on its merits, or that you show cause before this court at the court room thereof at Olympia, Thurston County, November State of Washington, on the 13th day of ~~October~~, 1958, at the hour of nine o'clock A. m., why you have not done so.

Witness, the Honorable Matthew W. Hill, Judge of this Court, attested by my hand and seal of said court, this 20th day of October, 1958.

Robert Holstein, Clerk Supreme Court; By Archie B. Stewart, Deputy.

Seal of the Supreme Court of the State of Washington

[File endorsement omitted]

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[fol. 66] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

RESPONDENTS' RETURN AND ANSWER TO APPLICATION FOR ALTERNATIVE WRIT OF MANDATE—Filed November 7, 1958

Answering the application for writ of mandate herein and the affidavit of A. H. Wenck, upon which it is based, the respondent, the Honorable Lloyd Shorett, Judge of the Superior Court of the State of Washington for King County, admits, denies and alleges as follows:

I

Admits the allegations of paragraphs I, II, III, IV and V.

II

Denies the allegations of paragraph VI.

III

Admits the allegations of paragraphs VII, VIII, IX, X and XI.

IV

Answering paragraph XII, respondent denies that the facts upon which the court found that the said 119 cor- [fol. 67] porations should be treated as one entity are not in substantial dispute, or that the subparagraphs stated thereafter constitute a complete or accurate "summary" of those facts.

V

Admits the allegations of subparagraph XII(a).

VI

Answering subparagraph XII(b), respondent admits the same, except for the words "then in effect" in line 10, which are denied.

VII

Admits the allegations of subparagraph XII(c).

VIII

Answering subparagraph XII(d), respondent admits the same, except for the allegation in lines 30 and 31, that each of said 118 corporations is operating its own cab or cabs "under its own separate permit or permits", which allegation is denied.

IX

Admits the allegations of subparagraphs XII(e), (f), (g), (h), (i) and (j).

X

Denies the allegations of subparagraphs XII(k) and (l)

XI

Admits the allegations of subparagraph XII(m).

XII

Answering subparagraph XII(n), respondent admits that on or about March 28, 1958, said 118 corporations served written notice of termination of said contract upon said respondent Local, effective as of May 31, 1958; admits that plaintiff-relator signed the letter which was sent; and denies all other allegations of said subparagraph.

XIII

Admits the allegations of subparagraph XII(o).

XIV

[fol. 68] Denies the allegations of subparagraph XII(p).

XV

Answering subparagraph XII(q), respondent admits that 19 of the cab owners and the plaintiff-relator have signed an agreement and submitted it to respondent Local, and that respondent Local returned said agreement; and denies all other allegations of said subparagraph.

XVI

Answering paragraph XIII, respondent denies that the subparagraphs thereof constitute a complete or accurate statement of the facts relating to the effect of the instant controversy upon interstate commerce.

XVII

Admits the allegations of subparagraphs XIII(a), (b), (c), (d) and (e).

XVIII

Answering the allegations of subparagraph XIII(f), respondent admits that the annual gross revenues from services to and from the airports is approximately $202,880.00, or 14.19% of the aggregate revenues received, and denies all other allegations thereof.

XIX

Denies the allegations of subparagraph XIII(g).

XX

Admits the allegations of subparagraph XIII(h).

XXI

Denies the allegations of subparagraph XIII(i).

XXII

Denies the allegations of paragraph XIV and all the subparagraphs thereunder.

[fol. 69] Further answering the application for the alternative writ of mandate and the affidavit of A. H. Wenck, upon which it is based, respondent affirmatively shows the Court as follows:

I

Your respondent, the Honorable Lloyd Shorett, is one of the Judges of the Superior Court for King County, Washington.

II

On October 1, 7, 8 and 9, 1958, the case of *Yellow Cab Service, Inc.*, a corporation, vs. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Taxicab Drivers and Chauffeurs Local Union No. 465;* and *George Lancaster*, its Secretary-Treasurer, King County Cause No. 526958, came on for hearing before this respondent, pursuant to an order directing the defendants to show cause why an injunction should not issue prohibit-

ing the defendants from picketing the premises of the plaintiff. The plaintiff was represented by Little, LeSourd, Palmer, Scott & Slemmons; Herbert S. Little, Warren K. Slemmons and Kenneth A. Cox of counsel. The defendants Taxicab Drivers and Chauffeurs Local Union No. 465 and George Lancaster were represented by Bassett, Davies & Roberts, Samuel B. Bassett and Richard P. Donaldson of counsel. The defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America did not appear and plaintiff offered no proof that service of process had been had upon it. In open court the parties stipulated that the hearing on the show cause order could be treated as a trial on the merits. Thereupon, witnesses were called and evidence was introduced. Counsel submitted briefs and argued the cause to the court. At the conclusion of the trial, respondent ruled that the court had no jurisdiction of the subject matter of the action.

## III

Respondent's ruling that the court had no jurisdiction of the subject matter was based upon the following facts, all [fol. 70] of which have substantial support in the record. (Appropriate references to the record follow each subparagraph.)

### A

Plaintiff is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Seattle, King County, Washington. Plaintiff has paid all license fees due and owing (Tr. 2, 9).

### B

Defendant Taxicab Drivers and Chauffeurs Local Union No. 465 is an unincorporated voluntary association, organized as a labor union, with its principal place of business at Seattle, King County, Washington. Said defendant is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Defendant George Lancaster is the Secretary-Treasurer of said defendant (Tr. 2, 9).

C

Prior to 1955 and 1956 the Yellow Cab Company, a partnership, operated a fleet of over one hundred taxicabs in Seattle. In 1955 and 1956, however, said Yellow Cab Company sold these taxicabs to some of its employees and others.

Contemporaneously with the sale of the taxicabs, the Yellow Cab Company organized the plaintiff corporation, and then sold to said corporation the facilities and equipment formerly used by it in conducting the taxicab business, including the lease on the garage and office facilities, radio and telephone dispatching equipment, shop and repair equipment, etc. (Tr. 11, 27-28; St. 23-24).

D

Each purchaser of a taxicab was required to incorporate under the laws of the State of Washington and, further, to execute a certain "conditional sales contract" and also a certain agreement" (Tr. 11, 27-28).

[fol. 71] E

Pursuant to the terms of the "conditional sales contract", each purchasing corporation was sold a taxicab, a meter, a radio, a city permit, and four shares of Series 2 common stock in the plaintiff corporation. The contract provided that said property was to remain the absolute property of the Yellow Cab Company until the payment in full of the purchase price. Upon payment in full of the purchase price, title would vest in the purchasing corporation subject, however, "to the terms and conditions of an agreement of even date herewith entered into between the parties hereto and Yellow Cab Service, Inc., a Washington corporation (the plaintiff)". The contract further provides that should the purchasing corporation break any of the provisions of said agreement then the Yellow Cab Company could repossess the property conveyed under the contract (Tr. 11, 27-28).

F

The same day that each purchasing corporation executed the "conditional sales contract" described in subparagraph

E, it also executed a certain "agreement" between the purchasing corporation on the one hand, and the Yellow Cab Company and plaintiff Yellow Cab Service, Inc. on the other. This agreement provides that the Yellow Cab Company will acquire the controlling shares in plaintiff corporation, that it will retain such shares until all the purchasing corporations make all the payments required under all of the conditional sales contracts, at which time such shares will be assigned and transferred to the plaintiff corporation. This agreement further provides that the purchasing corporations will "conform to, and be bound by, uniform rules and regulations" adopted by the Board of Directors of the plaintiff corporation covering "among other things", but without limitation, rules and regulations relating to the dispatch and traffic control of cabs, the use of taxi stands, the [fol. 72] servicing of transportation accounts, display of advertising, and maintenance and care of the Operator's taxicab". This agreement further provides that the purchasing corporation agrees to "conform to and be bound by the union contract provisions relating to the operation of taxicabs in the City of Seattle" (Tr. 11-12, 28).

G

Upon the execution of the "conditional sales contract" described in subparagraph E and the "agreement" described in subparagraph F, each purchasing corporation pledged its four shares of Series 2 common stock in plaintiff corporation to the Yellow Cab Company as security guaranteeing its performance of the terms and conditions of the "conditional sales contract". At the same time, and for the same purpose, the president of each purchasing corporation personally pledged a number of shares in each purchasing corporation to the Yellow Cab Company (St. 102; 111, 125, Def. Ex. 37).

H

In 1955 and 1956, pursuant to the contracts and documents described in subparagraphs E, F and G, the Yellow Cab Company sold some 120 taxicabs to some 118 purchasing corporations. None of the purchasing corporations

have as yet completed the payments required of it under the "conditional sales contract". In several instances the purchasing corporations could not make the payments required and the taxicabs were repossessed by the Yellow Cab Company and resold to other purchasing corporations (St. 5-6, 64-65, 103, 109-110).

I

Plaintiff corporation was organized to provide service facilities for the 118 purchasing corporations and to protect the investment of the Yellow Cab Company. The controlling interest in plaintiff corporation is held by the Yellow Cab Company. Plaintiff corporation has a five-man [fol. 73] Board of Directors, three of whom represent the Yellow Cab Company, and two of whom represent the 118 purchasing corporations (St. 7-8, 40-41).

J

Plaintiff corporation leases a building at 902 Madison Street, Seattle, Washington, wherein are located the plaintiff's offices, the radio and telephone equipment used to dispatch taxicabs, maintenance and repair facilities, and parking space. Generally the taxicabs are parked at this garage when not in use and shifts begin and end at this garage. The 118 purchasing corporations have no offices at this garage, but each corporation has a "box" at plaintiff's offices which it uses to receive mail and other notices and communications (St. 23, 25, 27, 215; Def. Ex. 13, 16, 20, 22).

K

Plaintiff corporation employs approximately 10 employees who operate the radio and telephone equipment used in dispatching the taxicabs. These employees are members of defendant Union Local 465. Plaintiff also employs several other employees, some of whom are known as "traffic men". These employees investigate accidents in which taxicabs are involved, they assist where there are mechanical breakdowns, they act as "starters" at the train depots and other places where taxicabs accumulate, and perform other similar activities. Plaintiff also employs office and clerical employees who do the bookkeeping, accounting and pay-

roll work for the plaintiff and the 118 purchasing corporations (Tr. 4, 10; St. 23-25, 27-28, 42, 143-144).

L

The 120 taxicabs operated by the 118 purchasing corporations are usually driven by the president of the respective purchasing corporations (hereafter called the "owners") and by employees specifically employed for that purpose (hereafter called the employee-drivers"). The employee-[fol. 74] drivers are members of defendant-Union Local 465 (Tr. 3, 9, 21; St. 143, 198, 205).

M

One of plaintiff's employees has been designated as "personnel manager". By action of the 118 purchasing corporations the "personnel manager" has been vested with authority to hire, fire and discipline the employee-drivers and to assign them to shifts on various taxicabs operated by the various purchasing corporations, as well as assign them their days off, emergency leaves and vacations, and such authority has been extensively exercised by the "personnel manager". There is a considerable interchange of employees from taxicab to taxicab. This is done upon the assignment of the "personnel manager". Personnel records relating to all employee-drivers are maintained by the "personnel manager" (St. 42, 46-48, 133, 135, 137, 143, 147-148; Def. Ex. 22, 42).

N

Every taxicab operated by the 118 purchasing corporations is painted the Yellow color. Plaintiff corporation is the owner and holder of the title to the Yellow color rights. Every taxicab has a license or permit from the City of Seattle which is issued jointly in the name of plaintiff corporation and the purchasing corporation (Tr. 3, 9).

O

At the end of each shift the driver of the cab, whether he be an employee-driver or an owner, is required to turn the

gross proceeds from that shift (known as the "turn") over to the plaintiff's office cashier. These funds are then credited to the account of the purchasing corporation owning the particular cab. From these funds the plaintiff corporation deducts and pays: 1) the wages due the employee drivers; 2) the payments due for Social Security, Workmen's Compensation, Unemployment Compensation and Health and Welfare coverages; 3) the automobile insurance premiums; 4) the payments due under the conditional sales contract; [fol. 75] and 5) the service charges due the plaintiff corporation (known as the "nut"). The amount remaining is paid to the owners. Checks are issued to the owners and to the employee-drivers once a week. The paychecks issued to the employee-drivers list the plaintiff corporation as payor (St. 24-26, 148, 152, 160-162, 169-170, 200, 203; Def. Ex. 43, 44, Plt. Ex. 46).

P

There is one blanket policy of fire, theft and liability insurance covering all the taxicabs. Plaintiff corporation assists the purchasing corporations in negotiating for this insurance coverage and deducts the insurance premiums from the daily "turn" and pays said premiums directly to the insurance company. Owners who have too many accidents will have their taxicab repossessed and resold to someone else. Each of the taxicabs carries advertising for the Standard Oil Company. The revenue from such advertising is paid to the plaintiff corporation (St. 25-27, 42-43, 107-108; Def. Ex. 20).

Q

Plaintiff's Board of Directors meets regularly for the purpose of discussing matters of common interest, including the adoption of rules and regulations relating to "the dispatch and traffic control of cabs, the use of taxi stands, the servicing of transportation accounts, display of advertising and the maintenance and care of the individual taxicabs" (Tr. 23; St. 40-41, 83-85, Def. Ex. 17, 19, 20, 30).

R

The owners hold periodic meetings at which times they discuss matters of common interest. At these meetings the owners have adopted uniform rules and regulations for the conduct of their joint business, including the procedure to be followed by the "personnel manager" in the hiring, firing, disciplining and assigning of employee-drivers. The [fol. 76] owners have also elected an owners' committee to act for the entire group of owners in the interval between owners' meetings. Two of the directors of plaintiff corporation are members of this owners' committee. The personnel manager of plaintiff corporation has attended the owners' meetings and has spoken to the owners about preventing accidents and having enough cabs on the street to take care of the business. The president of plaintiff corporation has attended meetings of the owners' committee and given advice to such committee (St. 32, 36-37, 43, 84, 163; Def. Ex. 14, 16, 22).

S

Once a week the plaintiff issues the "Yellow Cab Service, Inc. Bulletin" over the signature of plaintiff's president. This bulletin is published as a house organ and is distributed to all owners and employee-drivers. It contains the "operating procedure" and "rules and regulations" adopted at the owners' meeting, as well as announcements and directives from the plaintiff corporation (St. 28, 31, 133-134; Def. Ex. 6 thru 23).

T

At the time the taxicabs were sold to the purchasing corporations the Yellow Cab Company and the defendant Local 465 were parties to a collective bargaining agreement covering the drivers and dispatchers employed by the Yellow Cab Company. In June, 1956, after the sale of the taxicabs, this contract expired. Subsequently the purchasing corporations appointed a committee of owners, and this committee, together with representatives of plaintiff corporation, negotiated a new collective bargaining agreement

with defendant Local 465 covering the drivers and dispatchers. Each purchasing corporation, and the plaintiff corporation, signed this agreement. This agreement by its terms ran from August 1, 1956 to June 1, 1958, and from year to year thereafter unless amended or cancelled, and it provided that either party could open the contract by giv-[fol. 77] ing sixty days' notice to the other party. On March 26, 1958, the plaintiff corporation and the 118 purchasing corporations terminated said agreement and notified defendant Local 465 they were willing to negotiate the provisions of a new contract (Tr. 13, 28; St. 8-11, 77, 79-80, 126-127, 172-174, 180, 205; Def. Ex. 1; Plt. Ex. 27).

U

Upon the termination of the 1956-1958 agreement the owners' committee and the plaintiff's Board of Directors issued a uniform wage and hour policy to be applied to all employee-drivers, pending the negotiation of a new agreement (St. 83-87, Def. Ex. 30).

V

Contemporaneously with the termination of the 1956-1958 agreement the owners appointed a committee of five owners to negotiate with representatives of the defendant Local 465 for a new agreement. Two of the members of this committee were directors of plaintiff corporation. The president of plaintiff corporation sat in on some of the ensuing negotiations, as did the attorneys for plaintiff corporation, and one of the partners in the Yellow Cab Company from out of state. At times during these negotiating sessions the owners' committee would concern itself with problems relating to the wages and working conditions of the dispatchers, and, at other times, representatives of the plaintiff corporation would concern themselves with problems relating to the wages and working conditions of the employee-drivers (St. 9, 77, 81-82, 90, 117-119, 122, 177-178, 195-197, 206, 225-226). The correspondence between the owners' negotiating committee and defendant Local 465 is kept in a file in plaintiff's office. Letters sent by the owners' negotiating committee are typed by employees of plaintiff on plaintiff's stationery (St. 89, 213-214; Def. Ex. 27, 33, 47).

W

The annual gross revenue of all Yellow taxicabs operated by the 118 purchasing corporations is $1,429,914.02 (St. 50; Def. Ex. 24).

[fol. 78]

X

The plaintiff corporation owns franchise or concession agreements by which Yellow Taxicabs are given exclusive rights to pick up passengers at the following railroad, air line and steamship terminals in Seattle, which terminals service the interstate carriers of passengers and baggage: King Street Railroad Station; the Union Railroad Station; the King County Airport; the Seattle-Tacoma International Airport, and the Canadian Pacific Railroad Dock. In addition, Yellow Taxicabs take passengers to the above mentioned terminals, although such services are not pursuant to exclusive franchises or concessions. The annual gross revenue received by Yellow Taxicabs from taking passengers to and from the Seattle-Tacoma International Airport and the King County Airport is approximately $202,880.00. There is also a substantial amount of gross annual revenue received by Yellow Taxicabs from taking passengers to and from the King Street Station, the Union Station and the Canadian Pacific Railroad Dock; but no figures are available showing the exact amount of such revenue (St. 14-18, 21-22, 52-56; Def. Ex. 5, 24).

Y

The plaintiff corporation holds agreements with the railroads operating out of the King Street Station and the Union Station by the terms of which Yellow Taxicabs are exclusively utilized by said railroads to transfer through-passengers and baggage between said stations and the Canadian Pacific Railroad Dock, and vice versa. The annual gross revenue received by Yellow Taxicabs from furnishing such transfer services is approximately $1,436.00 (St. 14-16, 19-21, 51-52; Def. Ex. 4, 24).

Z

All the Yellow Taxicabs are dispatched indiscriminately to provide the services described in subparagraphs X and Y above (St. 17-18).

[fol. 79] 1-A

Following the termination of the 1956-1958 contract, representatives of defendant Local 465 met and corresponded with representatives of the purchasing corporations and the plaintiff corporation in an attempt to arrive at mutually satisfactory terms for a new contract covering drivers and dispatchers. As one of the conditions for agreeing to a new contract, defendant Local requested that the purchasing corporations and the plaintiff corporation settle with the Local several pending grievances which arose during the life of the prior contract, including the failure of the plaintiff corporation to pay over to trustees the sum of approximately $60,000.00 in pension premiums on employee-drivers which were required by the terms of the prior contract. Another request of defendant Local was that it have some assurance that the plaintiff corporation, through its officers or employees, would participate in the settling of any grievances which arose during the life of the new contract. However, the negotiations between the parties were unsuccessful and, on September 16, 1958, the defendant Local called a strike against the purchasing corporations and the plaintiff corporation, and, as an incident thereto, caused two pickets to peacefully patrol the garage used by the purchasing corporations and the plaintiff corporation, at 902 Madison Street, Seattle. The pickets carried signs reading:

"Yellow Cabs
are
Unfair
to
Taxicab Drivers Local
Union No. 465"

On September 17 and again on September 18, 1958, the Federal Mediation and Conciliation Service requested the

parties to meet with a representative of said Service in an effort to resolve the differences between the parties so that the strike could be terminated. Two meetings were held, [fol. 80] but no agreement was reached (Tr. 13-14, 28-29; St. 81-82, 96-100, 117-123, 175, 177-178, 183-188, 191-192; Def. Ex. 31, 32, 33, 47, 48).

1-B

On September 23, 1958, plaintiff corporation initiated the instant action seeking an injunction against defendant Local prohibiting it from picketing the premises at 902 Madison Street, Seattle. Plaintiff alleges that it is willing to sign a new agreement with defendant Local, that no labor dispute exists between it and defendant Local, and that the picketing is unlawful (Tr. 4-5, 10).

From the foregoing facts, the following conclusions of law are properly drawn:

I

The purchasing corporations and the plaintiff corporation constitute a single "employer" as that term is defined and used in the federal Labor Management Relations Act, 61 Stat. 136 (1947), as amended, 29 U.S.C. Secs. 141-187.

II

The purchasing corporations and the plaintiff corporation, considered as a single "employer", are engaged in an industry "affecting commerce" as those terms are defined and used in the federal Labor Management Relations Act, 61 Stat. 136 (1947), as amended, 29 U.S.C. Secs. 141-187.

III

The conduct of defendant Local 465 in this case is conduct governed by the terms of the federal Labor Management Relations Act, 61 Stat. 136 (1947), as amended, 29 U.S.C. Secs. 161-187. Defendant Local's strike against the purchasing corporations and plaintiff corporation, and its peaceful picketing of the premises at 902 Madison Street, Seattle, Washington, is either protected or prohibited by the terms of said Act.

[fol. 81]

IV

The court has no jurisdiction of the subject matter of this action.

Wherefore, having fully answered, the respondents pray that the application for writ of mandate should be denied.

Bassett, Davies & Roberts, Attorneys for Respondents.

*Duly sworn to by Lloyd Shorett, jurat omitted in printing.*

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[fol. 82]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 34929—En Banc

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THE STATE OF WASHINGTON on the Relation of YELLOW CAB SERVICE, INC., a corporation, Plaintiff and Relator,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 465; and GEORGE LANCASTER, its Secretary-Treasurer, Defendants and Respondents,

and

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, THE HONORABLE LLOYD SHORETT, Judge, Respondent.

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OPINION—Filed January 8, 1959

This is an application for a writ of mandate sought by the relator, Yellow Cab Service, Inc., a Washington corporation, to direct the superior court of King county to take jurisdiction of its action against the International

Brotherhood of Teamsters (hereinafter referred to as the union) to enjoin the picketing of its premises. The union successfully attacked the superior court's jurisdiction over the relator's action on the ground that the only proper forum was the National Labor Relations Board.

[fol. 83] Some background on the controversy between the relator and the union is necessary. Until 1955, the Yellow Cab company in Seattle was a partnership. During 1955 and 1956, a plan of liquidation was put into effect, under which all of the taxicabs were sold to some one hundred-eighteen individual Washington corporations independent in ownership from the relator corporation and from the original partnership. These one hundred-eighteen individual corporations, most of which purchased just one taxicab, then undertook the functions of operating their respective taxicabs. All taxicabs were purchased under conditional sales contracts from the partnership, none of which has been completely paid off as yet.

The trial court found that the relator corporation was organized for two purposes: (1) for service to the one hundred-eighteen individual taxicab operators, and (2) for assurance to the partnership that the taxicabs it had sold would ultimately be paid for. The relator corporation is controlled by the original partnership.

The central dispatching facilities were transferred to the relator. The relator also furnishes for the individual taxicab operators accounting and bookkeeping services, advertising services, and services as a bargaining agent for insurance upon all of the taxicabs. From the partnership the relator has derived certain exclusive contractual rights for Yellow Cabs to pick up arriving passengers at the Seattle railroad terminals, airports, and passenger steam-[fol. 84] ship docks. The relator holds and owns the Yellow Cab color rights, and the good will attached to the name of the Yellow Cab company, and grants their use to the individual taxicab operators.

As security during the period in which the taxicabs are being paid for, the partnership retains, through its conditional sales contracts, a considerable control over the quality of the Yellow Cab service. The conditional sales agreements give the partnership the right to repossess

taxicabs if their operators are guilty of breaches of good operating procedure as defined by the directors of the relator corporation, though, in practice, no such repossession has taken place. Matters of operating procedure and discipline of taxicab operators are handled through an operating committee of all of the operators, plus the representatives of the relator. Power to discipline operators is sometimes delegated by the operating committee to a "personnel manager" supplied by the relator.

In 1956, the relator and all of the operators bargained together with the union in making a contract which all parties signed. This contract terminated on June 1, 1958. The relator claims that it has accepted the union contract offered this year, and that many of the independent operators have also done so. The union, it is charged, has refused to sign the contract with the relator or any of the operators until some twenty to thirty of the operators, [fol. 85] who have not at this time accepted the offered contract, be persuaded, or compelled, to accept it. Furthermore, the relator charges that as a result of the union's dispute with these twenty to thirty operators the union is picketing the relator's place of business in Seattle, and such picketing has caused relator's crew of dispatchers to leave their jobs and remain away until such time as all of the taxicab operators, along with relator, agree to the union's contract. The relator, therefore, claims that it has no part in whatever labor dispute now exists, and that the picketing of its premises can properly be enjoined.

The merits of this case were never determined in the superior court, due to that court's decision that it did not have jurisdiction to proceed with the case. The superior court decided that the Yellow Cab system was in interstate commerce and that the case presented a labor dispute affecting interstate commerce over which the National Labor Relations Board would have jurisdiction. Relying on *Guss* v. *Utah Labor Relations Board* (1957), 353 U. S. 1, the superior court held that the federal jurisdiction over this case was exclusive and pre-empted the state court's jurisdiction.

The National Labor Relations Act empowers the National Labor Relations Board "to prevent . . . any person

from engaging in any unfair labor practice . . . affecting commerce." 49 Stat. 453, 29 U.S.C.A. § 160(a). The definition of the term "affecting commerce" is given as follows, at 49 Stat. 450, 29 U.S.C.A. § 152(7):

> [fol. 86] "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

The term "commerce" used herein at all times refers to interstate commerce subject to Federal regulation. See 49 Stat. 450, 29 U.S.C.A. § 152(6).

The first question to be answered concerning the National Labor Relations Board's jurisdiction in this case is whether Seattle's Yellow Cab system is "in [interstate] commerce." The conclusion of this court is that it is not.

The union places some reliance on a recent press release (October 2, 1958) from the National Labor Relations Board indicating that it will assume jurisdiction in cases involving taxicab companies where the annual gross volume of business is $500,000 or more. We are of the opinion that the ultimate test is not the amount of gross volume of business, but whether the local transportation service is an integral part of interstate commerce. *Guss* v. *Utah Labor Relations Board, supra,*

The Yellow cabs are based in the city of Seattle and operate almost entirely within King county. In order to establish that they are in interstate commerce, the union relies upon the business these taxicabs do in picking up and delivering passengers at the railroad terminals, airports, and passenger steamship docks. The total gross revenues received by all of the hundred and eighteen taxicab operating corporations from July 1, 1957, through June 30, 1958, was $1,429,914.02. Gross revenues received [fol. 87] from picking up passengers from the Seattle airports were $141,460.80 from Seattle-Tacoma Airport and $14,601.60 from King County Airport (Boeing Field). An estimate was made at the trial that this constituted seventy per cent of the full business of these taxicabs

in serving these airports, the remaining thirty per cent involving trips *to* the airports. Not all of these gross revenues came from passengers traveling interstate, however it appears that a substantial portion did.

No similar accounting was made concerning the gross revenues derived from servicing the railroad terminals or the passenger steamship docks, except for a relatively few passengers who, on prearranged tours, arrived at railroad terminals and took taxicabs directly to the Canadian Pacific docks, paying their taxicab fare by coupon. The gross revenues from the coupons received from these travelers totaled just $1,436,55 during the accounting year (approximately one-tenth of one per cent of the gross revenues).

A taxicab company having relatively the same scope of business was considered by the Supreme Court of the United States in *United States* v. *Yellow Cab Co.* (1947) 332 U. S. 218, 67 S. Ct. 1560, 91 L. Ed. 2010. That case concerned the sufficiency of a complaint brought under the Sherman Antitrust Act, involving, among other things, monopolistic practices in the Chicago taxicab fleet. The court held that the Sherman act did not apply to the [fol. 88] Chicago taxicab business because this manner of transportation was too predominantly a local activity to constitute an integral part of interstate commerce. The court held that,

> ". . . when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation. . . ." 332 U. S. at 233.

As explanation for this holding, the court said:

> "In a sense, of course, a traveler starts an interstate journey when he boards a conveyance near his home, office or hotel to travel to the railroad station, from which the journey is continued by train; and such a journey ends when he alights from a conveyance near the home, office or hotel which constitutes his ultimate destination. Indeed, the terminal points

of an interstate journey may be traced even further to the moment when the traveler leaves or enters his room or office and descends or ascends the building by elevator.

"But interstate commerce is an intensely practical concept drawn from the normal and accepted course of business. *Swift & Co.* v. *United States*, 196 U. S. 375, 398; *North American Co.* v. *S. E. C.*, 327 U. S. 686, 705. And interstate journeys are to be measured by 'the commonly accepted sense of the transportation concept.' *United States* v. *Capital Transit Co.*, 325 U. S. 357, 363. Moreover, what may fairly be said to be the limits of an interstate shipment of goods and chattels may not necessarily be the commonly accepted limits of an individual's interstate journey. We must accordingly mark the beginning and end of a particular kind of interstate commerce by its own practical considerations.

"Here we believe that the common understanding is that a traveler intending to make an interstate rail journey begins his interstate movement when he boards the train at the station and that his journey ends when he disembarks at the station in the city of destination. What happens prior or subsequent to that rail journey, at least in the absence of some special arrangement, is not a constituent part of the interstate movement. . . ." 332 U. S. at 231 and 232.

The task of drawing the line which bounds interstate commerce is anything but simple. *United States* v. *Yellow* [fol. 89] *Cab Co.*, *supra*, has drawn such a line, however, and we consider its holding to be an appropriate authority for the position we here take.[1]

[1] That *United States* v. *Yellow Cab Co.*, *supra*, was decided under the Sherman act does not make it less an authority upon the instant case. In that case, as in this one, the issue was whether there was any appreciable aspect of interstate commerce involved in the city's taxicab business. The court said, page 225, "But the amount of interstate trade thus affected by the conspiracy is immaterial in determining whether a violation of the Sherman Act has been charged in the complaint. Section 1 of the Act outlaws unreason-

More recently the Ninth Circuit Court of Appeals has considered the question of whether employees who drove airport limousines back and forth between downtown Honolulu and the airport were within the provisions of the Fair Labor Standards Act. See *Mateo* v. *Auto Rental Co.* (1957), 240 F. (2d) 831. The precise issue in that case was whether the drivers of so-called "airporter" vehicles in Honolulu were engaged in interstate commerce, and the "ultimate test is whether the local transportation service is an 'integral step in the interstate movement'." The court held that the drivers were not engaged in "interstate commerce."

A similar holding has also been made by the National Labor Relations Board in *Checker Cab Co.* (1954), 110 N. L. R. B. 683, wherein it was stated:

> ". . . Taxicab companies, by their very nature, perform local operations and are essentially local entities. To assert jurisdiction over such enterprises would neither comport with the congressional intent that the Board refrain from extending its activities to matters of local significance, nor otherwise effectuate the policies of the Act."

[fol. 90] We do not believe that whatever unfair labor practice may be present in this case can possibly be said to be "burdening or obstructing commerce" (see 49 Stat. 450, 29 U. S. C. A. § 152(7), quoted above). There is no testimony in the record that this strike has impaired taxicab service to or from the railroad terminals, airports, and docks, and hence no evidence of any effect upon interstate commerce sufficient to justify the application of the National Labor Relations Act. *United States* v. *Yellow Cab Co.*, *supra*. No such circumstance is present in this case.

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able restraints on interstate commerce, regardless of the amount of the commerce affected. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, note 59, p. 225; *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 485. . . ." Hence it is enough if some appreciable part of interstate commerce is the subject of a monopoly, a restraint or a conspiracy.

It would be easier to assert as interstate commerce the carriage of those above-mentioned passengers on prearranged tours who take Yellow Cabs directly from the railroad terminals to the Canadian Pacific docks. A comparison of gross revenues derived from this source, however, against the total gross revenues received from all Yellow Cab operations, shows that this station-to-docks business comprises one-tenth of one per cent of the total Yellow Cab operations.

The issue presented here concerning the scope of interstate commerce requires a determination guided by practical considerations, not technical conceptions. *Mateo v. Auto Rental Co., supra.* If it be conceded that one-tenth of one per cent of its total operations is in interstate commerce, we do not believe that Seattle's Yellow Cab system constitutes such an integral step in the inter [fol. 91] state movement of passenger traffic as to be considered as being in interstate commerce, nor that any unfair labor practices whether by the union or the Yellow Cab system burden or obstruct interstate commerce. For this reason the superior court was in error in holding that the jurisdiction of this case lies with the National Labor Relations Board.

For the consideration of the jurisdictional issue here presented, we have accepted the union's hypothesis that the relator and the one hundred-eighteen operating corporations constitute a system that can be treated as an entity. If it is such an entity, a matter which we do not decide, we hold that there is no unfair labor practice here involved which affects or burdens interstate commerce.

The writ of mandate is hereby granted directing the superior court of King county to take jurisdiction of relator's suit for injunctive relief.

Hill, C. J.

We concur: Mallery, J., Finley, J., Weaver, J., Donworth, J., Rosellini, J., Ott, J., Foster, J., Hunter, J.

[fol. 92]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 34929

THE STATE OF WASHINGTON on the Relation of YELLOW CAB SERVICE, INC., a corporation, Relator,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 465; and GEORGE LANCASTER, its Secretary-Treasurer, Defendants and Respondents,

and

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, THE HONORABLE LLOYD SHORETT, Judge, Respondent.

JUDGMENT—February 10, 1939

This cause having been heretofore submitted to the Court upon the application of the relator for a writ of Mandate to direct respondent to take jurisdiction of its action against the International Brotherhood of Teamsters to enjoin the picketing of its premises in that certain cause in which Yellow Cab Service, Inc., a corporation, is plaintiff and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; et al., are defendants in the records of the Superior Court of the State of Washington in and for King County being cause No. 526958 of said Court, and the Court having fully considered the same, and filed its opinion in writing, granting the writ, and on motion of Little, LeSourd, Palmer, Scott and Slemmons, of counsel for relator,

It Is Ordered, Adjudged and Decreed, that the Writ of Mandate be and the same is granted, directing the superior court of King County to take jurisdiction of relator's suit

[fol. 93] for injunctive relief; and that the said Yellow Cab Service, Inc., a corporation, have and recover of and from the said International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Taxicab Drivers and Chauffeurs Local Union No. 465, and George Lancaster, its Secretary-Treasurer, the costs of this action taxed and allowed at One hundred fifty-eight and 50/100 Dollars ($158.50), and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

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[fol. 94] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 34929

[Title omitted]

ORDER STAYING JUDGMENT—February 9, 1959

The judgment of this court to be entered herein on February 10, 1959;

And the defendants and respondents having indicated they intend to petition the United States Supreme Court for a writ of certiorari to review said judgment;

And the defendants and respondents having moved the undersigned for an order staying said judgment pending the disposition of said petition for writ of certiorari;

And the defendants and respondents having filed in this court a bond in the amount of $1000, which bond is written to indemnify the relator herein for any costs or damages incurred by it as a result of an order staying the judgment;

Now, Therefore, it is hereby ordered that the judgment of this court in the above entitled matter, to be entered on February 10, 1959, be and the same is hereby stayed in all respects until such time as (1) defendants and re-

spondents fail to petition the United States Supreme [fol. 95] Court for a writ of certiorari within the time limitations of appropriate federal statutes, or (2) said petition for a writ of certiorari is denied by the United States Supreme Court, or (3) the United States Supreme Court shall affirm the judgment of this court.

Dated this 9 day of February, 1959.

Frank P. Weaver, Chief Justice.

Presented by Richard P. Donaldson of Bassett, Davies & Roberts, Attorneys for Defendants and Respondents.

[fol. 100] Clerk's Certificate to foregoing transcript (omitted in printing).

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[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

No. 526958

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YELLOW CAB SERVICE, INC., a Corporation, Plaintiff,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION No. 465; and GEORGE LANCASTER, its Secretary-Treasurer, Defendants.

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## Statement of Facts and Exhibits

Be It Remembered that on Tuesday, October 7, 1958, at the hour of 9:30 o'clock, a.m., the above entitled cause came specially on for trial before the HONORABLE LLOYD SHORETT, one of the judges of the Superior Court of the State of Washington for King County, sitting in Department No. 8.

## Appearances

Herbert S. Little, Esq., Warren R. Slemmons, Esq., and Kenneth A. Cox, Esq., appeared on behalf of the plaintiff;

Samuel B. Bassett, Esq., and Richard P. Donaldson, Esq., appeared on behalf of the defendants.

Whereupon, the following proceedings were had and done, to-wit:

[fol. 2] Colloquy Between Court and Counsel

Mr. Bassett: I think, your Honor, it has been stipulated, at least conceded, by argument that the Yellow Cab Enterprise services railroad stations and instruments of interstate commerce. That is over and above the jurisdictional standard that the Board has established. That standard says even irrespective of that kind of showing, hereafter we will assert jurisdiction if the company or the employer does an annual volume of business of $500,000 or more.

Now, all this evidence that we are going to take on this subject, if Counsel want it, it is simply going to strengthen the case. I think if the Board considers it at all, I think if they stand by what they said recently, they will assert jurisdiction on a showing of this stipulation, that this enterprise does an annual volume of business of more than $500,000.

The Court: Do you mean to now claim, Mr. Bassett, if this taxicab business doesn't affect interstate commerce in any way that still the National Labor Relations Board has jurisdiction of the labor dispute?

Mr. Bassett: I do, because taxicabs—it is presumed that taxicabs, your Honor, do service railroad stations and airports and docks and things of that kind. Indeed, that is the bulk of their business. It is one of their important parts to their business. But, the Board doesn't consider that. It just assumes they handle that kind of business.

All we will look to see is, what is your total of business. [fol. 3] If it is $500,000 annually or more, we assert jurisdiction.

The Court: May I ask, are you willing then in this case to leave it with that assumption made by the Board and not have any evidence introduced?

Mr. Bassett: Yes, I am willing to leave it that way. I am willing to leave it just that way. If they want the evidence in, we will put the evidence in.

Mr. Little: Let me straighten one thing up here. I want no misunderstanding. Our stipulation in court as to the $500,000 related to the gross volume and not to the percentage of volume of business involved in trips to stations.

The Court: Oh, sure.

Mr. Little: And furthermore, it doesn't relate to the plaintiff or to the so-called Yellow Cab Enterprise. It relates to the 118 corporations. We would clearly show, without any doubt, that if it related only to the plaintiff here in this action it would be well under any jurisdiction.

The Court: I understood it related to the 118 corporations and the plaintiff combined.

Mr. Little: That's right.

Mr. Bassett: Your Honor, I think we will put the evidence in. In view of the statement that Counsel just made, we will put the evidence in.

I will call Mr. Wenck.

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[fol. 4] August H. Wenck, called as an adverse witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Bassett:

Q. Mr. Wenck, what is your relationship to the plaintiff, Yellow Cab Service Company?

The Court: Excuse me. First could we have your name and address, please?

The Witness: August H. Wenck.

The Court: And your home address?

The Witness: 5 Enatai Drive, Bellevue.

By Mr. Bassett:

Q. What is your relationship, Mr. Wenck, to the plaintiff, Yellow Cab Service Company?

A. My relations?

Q. Yes.

A. I am president of the corporation and director.

Q. From the time it was organized?

A. Yes.

Q. What year was that?

A. I believe 1956.

Q. And before that were you a partner in the Yellow Cab Company?

A. Yes, sir.

Q. That company, prior to 1956, owned the Yellow Cab Company, did it not, of Seattle?

A. Yes.

Q. And that included all the property that is being used today in the operation of the company, such as radio and garage facilities and things of that kind?

[fol. 5] A. Cabs and equipment, yes.

Q. And the permits, of course, licenses issued by the City of Seattle?

A. They don't belong to the Service Company. They belong to the Yellow Cab Company.

Q. To the Yellow Cab Company at that time?

A. That's right.

Q. Now, when was it that the Yellow Cab Company—I will call it the Yellow Cab Company; I mean the partnership.

A. All right.

Q. When I say "Service Company," I mean the plaintiff.

A. All right.

Q. Did you tell me what year the Service Company was organized as a corporation?

A. I think it was February, 1956.

Q. And was that the time the Yellow Cab Company began selling its cabs to former drivers and others?

A. They sold at that time, yes.

Q. They sold at that time?

A. That's right.

Q. All of them. Was it done at one time or were some sold later?

A. Some were sold later.

Q. How many cabs were involved altogether in the sale, and how many permits?

A. One hundred and twenty.

Q. One hundred and twenty?

A. Uh huh.

Q. And how many are operating now?

A. I can't tell you how many are operating now. There are 118.

Q. That have a right to operate?

A. One hundred and twenty.

Q. Now, we understand that these purchasers, who we will call operators from now on, to make it short—

A. All right.

Q. —were required to incorporate?

A. That's right.

Q. Each purchaser or operator was required to incorporate under the law of the State of Washington?

A. That's right.

Q. And the Yellow Cab Company made that requirement, did it not?

A. Yes.

Q. As a part of the sale?

A. Of the sale.

Q. Now, what was the reason for that; why was the Yellow Cab Company interested in compelling these purchasers to incorporate?

Mr. Little: I object to the word "compel."

By Mr. Bassett:

Q. Why did you have that requirement in the contract?

A. We never compel anybody to do anything, let's get that straight.

Q. Why did they have that requirement in the contract?

A. Because we—after the sale, we had a total of 118 corporations or 118 conditional sales contracts.

Q. Why was it necessary to incorporate these purchasers?

A. I don't know. The rest of my associates all agreed that that would be the proper thing to do.

[fol. 7] Q. How many partners were there in the Yellow Cab Company?

A. I think ten.

Q. How many were residents of this state?

A. Myself.

Q. The others were from Portland?

A. Oregon and California.

Q. Well then, you can't recall any specific reason for requiring the incorporation of these operators?

A. No. Just good business, I think, is the only reason I can give.

Q. Why was the Yellow Cab partnership interested in incorporating the Service Company?

Mr. Little: May I ask the Court what the materiality of this kind of question is? It seems to me it is kind of far afield of this question that you are putting Mr. Wenck on the stand for, and of the issues before us.

The Court: Mr. Little, I think I will have to rule only if there is an objection. You may continue your examination.

The Witness: Will you state that question again?

(Last question read.)

A. I suppose.

By Mr. Bassett:

Q. To state it differently: Why did you have a Service Company: what was the purpose of a Service Company?

A. Oh, to provide the necessary services that these 118 individual cab owners would require. It is a pattern that has been set all over the country, locally and other places. [fol. 8] To be specific, that is the way the Farwest and Gray Top Cab operates. We thought they had good experience in that type of operation. I have seen others throughout the country operating on the same basis. We thought that was the right thing to do.

Q. Weren't the partners interested, Mr. Wenck, in con-

trolling the operation and seeing to it that it operated in the manner that the partnership wanted it operated?

A. We wanted to protect our investment, yes.

Q. Surely. After the sale to the operators, when was the first time that a collective bargaining agreement was negotiated with the defendant Union?

A. Well, when we sold there was a contract, a Union agreement in effect, as you probably know.

Q. Yes.

A. Which I think expired,—I think the selling date was February 5, 1956. I think the following June a new contract was entered into. That would be June of 1956.

Q. And that was a two-year contract?

A. I don't remember whether it was a one or two year.

Q. It was negotiated then in that interval between the time of the sale in February and—

A. Yes, sir.

Q. —the expiration date in June of 1956?

A. I think that's right.

Q. Now, did you participate in those negotiations, Mr. Wenck?

A. Did I participate?

Q. Yes.

[fol. 9] A. Oh, I participate in a lot of things by sitting in on meetings, and when these various owners get together and have problems they usually ask me to sit in and pass on to them any advice or experience that I might have.

Q. And in doing that you are not only sitting in as a representative of the partnership, but you are also sitting in as President of the Service Company?

A. That's right, President of the Service Company.

Q. You had an interest, too, in your conditional sales contract, of course?

A. That's right.

Q. Did anyone else representing the Yellow Cab Company or the Service Company participate or sit in on those negotiations?

A. Anybody else who is interested in Yellow Cab? That is the partnership?

Q. Or the Service Company, besides yourself?

A. Sit in on those? I don't recall any.

Q. Do any of your lawyers sit in on those?

A. What time?

Mr. Little: What negotiations?

Q. The 1956 contract.

A. We had so many, I can't remember who was at every meeting.

Q. I see. Well now, when the contract was finally negotiated and an agreement was reached, did the Service Company sign it? Did you sign as President of the Service Company?

A. For the employees of the Service Company.

Q. It was one contract, wasn't it?

[fol. 10] A. There was one contract, I think, with about 111 or 112 signatures from these independent owners.

Q. Mr. Wenck, you signed the same contract that the operators signed; it was one contract, wasn't it?

A. I think—

Mr. Little: To be fair, I don't think you should ask for a legal conclusion. Let's get the agreement; it speaks for itself. On one page there is Mr. Wenck's signature, and on a series of pages there are signatures of 107, I think.

The Witness: Was it 107? I don't know how many now.

By Mr. Bassett:

Q. As a matter of fact, all of the operators signed within a very short time after the Service Company signed, isn't that true?

Mr. Little: If he knows.

A. I don't know whether that is true or not, Mr. Bassett. I don't know whether they signed first or I signed first. I have no authority to sign for anyone except the Service Company.

Q. Do you remember, finally, there was one man, one operator who hadn't signed, and Mr. Baiocchi or someone from the company office called him in off the street and told him to sign the contract?

A. I don't remember that.

Q. You don't remember that?

A. No.

Q. Do you devote all your time to the management of the Service Corporation?

A. I do not.

[fol. 11] Q. How much of your time do you devote to it?

A. Oh, I have other things that I devote time to. I spend some time around there. I talk with and visit with the various owners, and, I don't know whether I spend three hours or five hours a day around there. I have no schedule, no particular time to be there or leave.

Q. Well, do you suppose you could identify that 1956 contract if I showed it to you?

A. You mean the signatures?

Mr. Bassett: Would you mark this, please.

(Contract of June 1, 1956, was marked for identification as Defendants' Exhibit No. 1.)

Q. Showing you Defendants' Exhibit No. 1 for identification, I will ask you if that is the contract of June, 1956?

A. Oh, I suppose it is.

Q. The one we have been talking about?

A. It looks like it.

Q. Does that bear your signature, sir?

A. Yes, it does, for Yellow Cab Service, Inc. Here are the other people who signed.

Q. I understand that.

A. I signed for Yellow Cab Service.

Q. I understand that, too. Each of these 118 or 120 signed for his company?

A. That's right.

Q. Isn't that right?

A. That's right.

Q. As president?

A. That's right.

Q. But all signed this agreement, didn't they?

[fol. 12] A. I think there were seven who failed to sign.

Q. Show me who they are?

A. I don't know who they are.

Q. There ought to be a blank there. You point it out.

I have heard you say and I have heard your Counsel say it.

A. Well, look, brother, this is two and a half or three years ago. My memory isn't that good. Do you want to count each one of those?

Q. No, I don't want to count them.

A. I don't either then.

Q. I don't see any blanks here.

A. That looks like a document that was signed in the Yellow Cab office. I will agree to that. I think that is true.

Mr. Bassett: I will offer Defendants' Exhibit No. 1.

Mr. Little: I have no objection to it.

The Court: Exhibit No. 1 will be admitted.

(Defendants' Exhibit No. 1 for identification was received in evidence.)

A. (Continuing) There may be some of those, Mr. Bassett, where some people owned two or three corporations, one individual. I don't think you will find 120 separate signatures on there.

Q. By that do you mean that some of these operators own more than one cab?

A. When we started out, yes, that happened. There are still a few that way.

Q. Now, my question was this: Did all these individual [fol. 13] companies who purchased cabs from you sign this contract?

A. I think so, yes.

Mr. Little: To save time, we will agree that those two agreements were executed.

Mr. Bassett: All right.

Mr. Little: Do you have the dates in there?

Mr. Bassett: No.

Mr. Little: I think they should be put in.

Mr. Bassett: That was about what?

Mr. Slemmons: February, 1956.

Mr. Bassett: Unfortunately this conditional sales contract bears the year 1955. I don't know why.

Mr. Slemmons: You must have an old copy.

Mr. Bassett: It says "Conditional Sales Contract." Take a look at it.

(Copy of Conditional Sales Contract was marked for identification as Defendants' Exhibit No. 2.)

(Copy of Agreement was marked for identification as Defendants' Exhibit No. 3.)

Mr. Slemmons: These are in mimeographed form. It must be the date was stricken when they were signed.

I think they are all right.

(Colloquy.)

Mr. Bassett: Do you have any objection to Defendants' Exhibit No. 2, the Conditional Sales Contract?

Mr. Little: I have no objection to either. I would like the date.

Mr. Bassett: You may supply the date at any time.

[fol. 14] The Court: Exhibits 2 and 3 will be admitted.

(Defendants' Exhibit No. 2 for identification was received in evidence.)

(Defendants' Exhibit No. 3 for identification was received in evidence.)

Mr. Bassett: Will you mark this, please.

(Agreement was marked for identification as Defendants' Exhibit No. 4.)

Mr. Little: To save time, we will stipulate that these agreements were entered into. We are not sure whether Mr. Wenck remembers about the agreements or not, not having talked to him about it, but Mr. Slemmons assures me they were entered into.

(Colloquy.)

Mr. Little: I have no objection.

The Court: Now then, Exhibit No. 4 may be admitted without any further proof; is that right?

Mr. Bassett: If that is true, I would like to make a statement as to what it consists of.

The Court: All right.

Mr. Bassett: It is a contract between the Northern Pacific Railway Company and the Yellow Cab Company, dated April 2, 1946. There is attached to it an assignment of that contract from the cab company to the Service Company dated October 4, 1956, which assignment is also signed by the two railroad companies or railway companies.

(Defendants' Exhibit No. 4 for identification was received in evidence.)

Mr. Bassett: Would you mark this, please?

fol. 15] (Agreement was marked for identification as Defendants' **Exhibit No. 5.**)

Mr. Bassett: Do I understand that you are not objecting to this?

Mr. Little: The same.

Mr. Bassett: Defendants' Exhibit No. 5 is a contract by and between the same two railway companies and the Yellow Cab Company, dated April 1, 1946. There is attached to it, an assignment from the cab company to the Service Company which is consented to and signed also by the two railway companies.

The Court: What is the date of the assignment?

Mr. Bassett: It is dated October 4, 1956. The assignments both bear the same date. I haven't studied them carefully to find out the distinction. I have an idea that one relates to possibly hauling passengers to airports and the other to steamship companies, but we will examine those during the recess.

The Court: All right. Exhibit 5 is also admitted.

(Defendants' Exhibit No. 5 for identification was received in evidence.)

By Mr. Bassett:

Q. Mr. Wenck, showing you Defendants' Exhibits 4 and 5 just to refresh your recollection as to what they are, on top of the assignments and under them are the agreements with the railroad concerning the hauling of passengers.

A. Uh huh.

Q. Now, we also in our subpoena duces tecum which was

[fol. 16] served on your counsel, we asked for other similar agreements that the cab company or the Service Company has with the Seattle-Tacoma International Airport, the Union Station, the Canadian Pacific Dock and the King County Airport and the Union Pacific.

A. Well, the Union Pacific, I think, is a similar transaction, but we couldn't find it.

Q. You would say it is similar to Exhibits 4 and 5?

A. I would say so, yes. The Canadian Pacific is just a concession privilege. I don't know of any transfer arrangements there.

Q. You don't know whether that is in writing?

A. I think the reason you asked about the Union Pacific is because of the railroad transfer arrangement. I don't know of any existing with the Canadian Pacific. I don't know for sure. These contracts were dated back in 1946 as you mentioned here.

Q. Yes, sir.

A. And some were dated, probably the Canadian Pacific, before my time with the company. It just keeps on going on year after year.

Q. The assignment is dated in 1956.

A. I don't recall any assignment. Now, the King County Airport, or Boeing Field, I am quite certain is a subcontract with Gray Line. Gray Line made the arrangement originally, as I recall it, and named Yellow Cab a subcontractor.

Mr. Littler: That is Gray Line Tours, Inc.?

The Witness: It was Gray Line Tours at that time. I think at this time the contract reads Gray Line Avis, Inc. [fol. 17] or Gray Line Tours, Inc. I don't know. It is another company.

Q. Is that between the Service Company and Avis?

A. I can't answer that one either. I don't know whether it has ever been changed. I think it is still in the old Yellow Cab Company. It probably is. Seattle-Tacoma Airport is a like situation.

The Court: It is like Boeing Field?

The Witness: Boeing Field is King County. Seattle-Tacoma is for the Port of Seattle.

By Mr. Bassett:

Q. At any rate, those contracts with the two airports, the King County and the Seattle-Tacoma—subcontracts let's call them—

A. Yes.

Q. They give the Yellow Cab Company or the Yellow Service Company exclusive rights to operate?

A. That's right. That is the arrangement we had with the old Yellow Cab Company. Whether they ever transferred into the new name "Service Company"; I don't know.

Q. At any rate, it is still exclusive to the Yellow Cab Company?

A. We carried it right on through.

Q. Does the Service Company now have any rules governing which of these operators shall service either of these two airports?

A. Does the Service Company?

Q. Yes.

A. In other words—

Q. Any rules governing that?

A. To tell the Jones Yellow Cab Company to go or not [fol. 18] to go there?

Q. Yes.

A. No. They all work off the central dispatch system, the same as they did in the old company's days.

Q. Depending upon which cab or cabs might be free, they are dispatched to the airport?

A. I would say that is the way it works, yes.

Q. Then you don't have a group of cabs that service the airports exclusively?

A. All of them do.

Q. All of them do?

A. Yes.

Q. Now, do all the cab operators also have the right to serve the railroad station and the docks just as they do the airports?

A. Yes.

Q. Mr. Wenck, is that particular operation, that is the servicing of the railroad stations and the docks and air-

ports, is that governed by any contract between the Service Company and these individual corporations or operators?

A. Governed by the contract. The Service Company is part of the—these people—it is their Service Company. They pay for the maintenance of them. It services all of them.

Q. Well, none of these individual companies have any franchise, do they?

A. No.

Q. —with the airports or the stations?

A. No.

[fol. 19] Q. Now, we asked for the minutes of the Yellow Cab Service, minutes of the Board of Directors' meeting between January, 1956 and this date. Are those here?

Mr. Slemmons: I have them.

Mr. Bassett: I am not going to take the time this minute to go through them, but I would like to do it during the recess.

Mr. Slemmons: Certainly.

Mr. Bassett: I understood you to say you do have the correspondence file?

Mr. Slemmons: In this folder right here.

By Mr. Bassett:

Q. Mr. Wenck, looking again at Defendants' Exhibit 4, and on the second page of the contract, April 2, 1946, it says: "Each of said railway companies shall compensate the cab company for said transportation of such passengers and their hand baggage at the following rates:

(a) For each passenger, not traveling as a member of a party or group, and for each passenger as a member of a party or group of nine or less members, 50 cents."

A. That's right.

Q. And,

"(b) For each passenger traveling as a member of a party or group of ten or more members, 25 cents."

A. That's right.

Q. And I understand that has been raised now, has it?

A. No. We were going to.

Q. You applied for a raise?

A. We wrote to a railroad and they referred to the con-
[fol. 20] tract. Nothing further has happened. There is so little of that business now we are thinking about discontinuing the service all together.

Q. My question concerning that matter is this, Mr. Wenck: How does these two railroad companies compensate the cab company or the Service Company for this particular service?

A. Well—

Q. Is it monthly?

A. Yes.

Q. Do you send them a bill each month?

A. Yes, and a coupon.

Q. They send you a check for that month?

A. Yes.

Q. How long would it take to compile that for the last year; would that take a great deal of work to find out how much it totals?

A. I think we could get that information. I can't tell you how they keep it. We certainly could for all those billings. I think we could give you the total on that for a year or whatever time you want it. Do you want the railroad coupon number?

Q. What the total revenue is from those two railroads during the past year.

A. All right. What date do you want to take?

Q. Well—

A. Say the last of August?

Q. Let's take one full calendar year.

A. All right, for one year.

(Colloquy.)

[fol. 21] Q. Now, do you have the same arrangement concerning this kind of service with the Union Pacific Company? You said the contracts are similar.

A. Well, yeah. As I understand it, Mr. Bassett, all these railroad coupons, they are issued by various railroads, you

see. We pick them up here and I think we send them to either Chicago or St. Paul. It is sort of a clearing house. Various railroads pay. They are billed out of there. We bill this one source. I think it is a railroad, either the Great Northern, or one of those railroads in St. Paul, if I recall properly.

Q. So we—

A. So then all the railroads would come into this same thing.

Q. Come into one. All right. Now, the servicing the airports is not done in this fashion, is it?

A. No. We keep track of the total amount of business coming from the airports and then we pay the airports ten per cent of whatever the revenue is.

Q. That is the way you keep track of it?

A. That's right. We can give you that figure if you want it.

Q. We would like to have that during the same period.

A. All right.

Q. Now, at one time, Mr. Wenck—I don't know whether it exists today—the Yellow Cab Company did have arrangements with some of the hotels whereby they, particularly the Olympic Hotel, I believe, where the Yellow Cab had exclusive right to stand taxicabs; isn't that true?

A. Not in my time. We used to keep it covered, so to speak, and keep the competitors off; but it is a public street [fol. 22] and we have no exclusive rights there.

Q. I don't know how you did it, but it was very effective. I saw a cab the other day—

A. That's right. We have changed our tactics since these new owners are in there. They like to have the brothers all get some of the business.

Q. Don't you have any arrangments now with the Olympic Hotel?

A. No. Never. We never paid anything for that. We just provide the best service and retain the concession.

Q. Mr. Wenck, does the company pay the railroads at all for this concession?

A. I think we pay the King Street Station $30 a month, and I think it is $15 at the Union, or $30. Nothing more than that.

Q. That is all?

A. That is all. We have for years, Mr. Bassett.

Q. No commission?

A. No, no percentages.

Mr. Bassett: I don't think I have any further questions of Mr. Wenck now until we have an opportunity to look at the minutes and the correspondence.

The Court: Let me ask counsel: You are going all through on the hearing on a temporary injunction? I don't know whether we will get down to the merits or dispose of it in some other way, but it seems to me that you might consider just stipulating to try the case now and get the whole thing over with, and whoever loses can go to the Supreme Court.

Mr. Bassett: I am prepared to do that, your Honor. [fol. 22a] We have done that in many instances in the past.

The Court: Do we have to go clear through a trial?

Mr. Little: I agree. Furthermore, we did apply for a permanent injunction.

Mr. Cox: This is pursuant to Judge Agnew's expressed opinion last time. There is no point in trying it twice. He would appreciate the matter being taken up.

The Court: All right. We will try it all out and get it over with now.

(Colloquy between Court and Counsel.)

Mr. Bassett: We will recall Mr. Wenck for more questions.

The Court: Mr. Wenck, you were previously sworn, so just be seated.

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AUGUST H. WENCK, resumes the stand.

[fol. 23] Direct examination (continued).

By Mr. Bassett:

Q. Mr. Wenck, at the time of the sale of these operating companies, what facilities did the Yellow Cab partnership have in addition to the taxicabs themselves? Do you have a garage here?

A. No. We don't have the garage. We rent the garage.
Q. You rented the garage?
A. Uh huh.
Q. And did you have just one garage?
A. That is all.
Q. That was located at 9th and Madison?
A. Right.
Q. And the partnership then did not own the realty?
A. No.
Q. Never has?
A. No.
Q. They leased it. The partnership then subletted to the Service Company; is that right?
A. That's right.
Q. Now, are there any other facilities in the way of real estate besides that?
A. No, no real estate.
Q. Now, did the company have its office there in this building at the time of the sale?
A. Oh, yes.
Q. That is where all the bookkeeping and accounting was done?
A. That's right.
Q. And it is still done there?
fol. 24 A. That's right.

Mr. Little: You are now talking of the Service Company?
Mr. Bassett: Yes, and before the Service Company.
The Witness: We sold all of the plant equipment, office and shop and everything else to the Service Company.

Q. Now, then the Service Company now is doing the bookkeeping work for these 118 operators; is that right?
A. That's right.
Q. How often do you issue to these operators a statement of account?
A. You mean to the individual company operator?
Q. Yes.
A. I think they get one weekly.
Q. They get one weekly?
A. Uh huh.

Q. Those individual operators have employees, don't they; drivers?

A. Sometimes, yes.

Q. Now, who pays those drivers?

A. The owner of the cab.

Q. Well, it comes out of what is turned in to the—

A. He and his driver usually turn in to the cashier that is provided for that purpose, and the accounting is done for them.

Q. Well—

A. And then—

Q. Excuse me.

[fol. 25] A. That is what they do.

Q. Let's go into it in this fashion: A cab has been out in the street we'll say for nine hours and it comes in; it drives into the garage, doesn't it?

A. Yes.

Q. Does the driver turn in the money that he took in that shift?

A. He is supposed to, yeah.

Q. He also turns in what else in connection with the money he turns in; does he have a trip sheet?

A. Oh, yes.

Q. When he comes in, is the meter checked in any way?

A. That is up to the individual owner, if he checks his meter or doesn't.

Q. Is there a receipt issued to the owner or driver, whichever it may be, who comes in and turns in the money?

A. Does that driver receive a receipt from the Service Company for the money?

Q. Yes.

A. I don't think they give them any receipt particularly; no.

Q. Now, that money then is credited to the owner of that taxicab; is that correct?

A. That's right.

Q. How often are paychecks issued to drivers?

A. Weekly.

Q. Now, the Service Company issues those checks to the drivers, does it not?

A. That's right. They do the accounting.

[fol. 26] Q. And they also issue a check to the owner, do they not?

A. For his money, that's right.

Q. For his end of it?

A. Uh huh.

Q. If he has a driver, a check is also issued to the driver?

A. That's right.

Q. Covering his wages. Now, in connection with that matter, does the Service Corporation make deductions such as Social Security, unemployment compensation?

A. Yes.

Q. And Workmen's Compensation?

A. Yes.

Q. The Service Company makes all those deductions and pays those bills?

A. Yes.

Q. What about insurance; how is the matter of insurance handled?

A. They collect for the insurance and turn the funds over to the insurance company.

Q. You deduct that from money that is turned in?

A. That's right.

Q. And pay it to the insurance company?

A. That's right.

Q. Are these cabs all covered by one policy of liability insurance?

A. They are all covered, and there is a blanket policy covering all of them.

Q. A blanket policy?

A. They are equally covered.

[fol. 27] Q. That includes also fire and theft as well as liability?

A. That's right.

Q. How is the premium portioned among these 118 companies?

A. The premium is divided by the 120. Each one pays 120th of it, yes.

Q. That is also handled by the Service Company, is it not?

A. That's right. That is all the Service Company does, just the accounting.

Q. Well, what about telephone facilities? Do you have them in this building at 9th and Madison?

A. About the same as we always had.

Q. What does it consist of?

A. Well, it consists of a switchboard and radio dispatching system.

Q. Do you have a radio operator there?

A. Oh, yeah.

Q. And he communicates with the cabs out on the street?

A. That's right.

Q. And each cab has a number?

A. Yes.

Q. A signal of some kind. Who is manager of that office?

A. The Service Company office?

Q. Yes.

A. Well, our accountant there, Mr. Brand, looks after it.

Q. What is Mr. Baiocchi's function?

A. Well; Mr. Baiocchi is there; he is engaged by all these people working in the Service Company to do whatever work is necessary to do, look after the various affairs of business and things to be done there.

Q. Now, I understand you have ten dispatchers?

[fol. 28] A. Oh, it varies. I think, generally speaking, the crew consists of ten people.

Q. Do you have other employees besides the dispatchers in that building?

A. The office help.

Q. Is the radio operator a dispatcher?

A. Oh, yeah.

Q. How many office people do you have?

A. Oh, I'd say half a dozen.

Q. Who determines how many cabs should be out on the street at a particular time; I mean, Yellow Cabs?

A. Oh, I don't think there is any particular determination as to how many cabs will be operating. I think, if the owners, what we call show up and go to work, there may and there may not. That is the way it has always been. You never knew whether the crew was going to show up a hundred per cent or not, even in the old company days.

Q. Doesn't the Service Company attempt to control the

number of cabs that are going to be out if there is a convention or something of that kind going on?

A. I wouldn't say the Service Company controlled it. I would say the owners themselves get together and try to determine what they want to do or what they would like to do, and Mr. Baiocchi assists them in trying to carry that out.

Q. Mr. Wenck, as President of the Service Company, the plaintiff, have you issued periodic bulletins to the operators?

A. There is a bulletin published weekly, and quite often I don't even read them, and my name is on the bottom of [fol. 29] the bulletin.

Q. Who writes them?

A. I think Mr. Baiocchi and some of the boys come in and they have an idea, and it is a sort of a house organ that is put together by the boys themselves.

Q. Mr. Wenck, there are certain bulletins that you brought in, these bulletins that we would like to question you about.

A. Just remember what I just told you, there is a lot of them I haven't read.

Mr. Bassett: Would you mark this?

(Bulletin of September 4, 1958, was marked for identification as Defendants' Exhibit No. 6.)

Q. Showing you Defendants' Exhibit No. 6 for identification, which is labeled, "Yellow Cab Service, Inc. Bulletin, September 4, 1958," I will ask you if you remember that bulletin?

A. No, I don't remember it. I don't even know what is in it. "School opens"—I don't—

Q. Well, there is one item here that speaks of lost baggage. Are you familiar with that situation?

A. What do you mean "lost baggage"?

Q. Well, let me read it. "Recently some baggage was placed behind the spare tire in the trunk compartment and overlooked by the driver. The result was a two-hour search of all cabs for this baggage. It could have been very

serious if the passenger did not have time to wait for this baggage to be discovered. Certainly there is no excuse for leaving baggage in the cab after it has been placed there by the driver and if it becomes necessary, disciplinary ac-
[fol. 30] tion will be taken if future occasions warrant."

Are you familiar with that?

A. That was probably put in there by Baiocchi. No doubt it was.

Q. Does he have authority to put those things in there?

A. He makes up the bulletin; he and the boys around there work those up, as I told you before. I don't always read them.

Mr. Bassett: We offer Defendants' Exhibit 6 in evidence.

Mr. Little: Well, I object to its admission at this time, if your Honor please, until the person who prepared it is on the witness stand.

The Court: Overruled. Exhibit 6 will be admitted.

(Defendants' Exhibit No. 6 for identification was received in evidence.)

Mr. Bassett: Would you mark this?

(Bulletin of September 17, 1958, was marked for identification as Defendants' Exhibit No. 7.)

Q. Mr. Wenck, here is another bulletin, Defendants' Exhibit No. 7, which is more recently dated, September 17, 1958. Are you familiar with that one?

A. Oh, I think I hurried off this one, because I recognize, "Football Saturday." I didn't write it. I will tell you how these are made up. Would you like to know?

Q. Yes.

A. You probably wonder why my name is on there. Well, they started by putting my name down there. It is issued [fol. 31] by the mimeograph in the Service Company office. We have, we will call it an operators' committee, a group of these fellows that own these cabs, they have team captains for accident prevention and things of that kind, and these boys come in and they have ideas about things they would like to put in the bulletin. They have a chap there by the name of Booth. Booth does the typing. He and

Baiocchi and the rest of these boys usually say, "Well, Bob, put this in the bulletin," or, "Here is something for the bulletin."

Q. Who is Bob? Baiocchi?

A. No. Bob Booth. He is on strike now.

Q. Is he the fellow who does the actual writing?

A. He types them, yes.

Q. Who prepares the draft; whose language is it?

A. I would say it is between he and Baiocchi. They get their heads together and make little notes and things, and they put the thing together. It is just a little house organ.

Q. I call your attention to the fact, Mr. Wenck, that in several places in this particular bulletin it refers to "our cabs" and it is signed Yellow Cab Service, Inc., by you as president. What do you mean "our cabs"? "Our cabs." You are talking about "our cabs".

A. Sure. There are 118 fellows over there and they are our cabs. You have one; I have one; the other fellow has one. It is ours.

Mr. Bassett: Do you have any objection?

Mr. Little: I have two. The same objection that I gave previously. Also, I think it is irrelevant.

[fol. 32] The Court: Exhibit 7 will be admitted.

(Defendants' Exhibit No. 7 for identification was received in evidence.)

By Mr. Bassett:

Q. You mentioned an operators' committee. How is that committee appointed?

A. We had a half dozen different deals since we have been there.

Q. Who appoints them?

A. The men themselves.

Q. Don't you have anything to do with appointing?

A. They go out there and they have the—I think the last committee consisted of seven owners who were selected by the group at one of their meetings.

Q. Do you serve on those committees?

A. No.

Q. You never served on them?

A. No.

Q. Has Mr. Baiocchi served on those committees?

A. No. It is the owners that are running that outfit. We are not running it.

Q. Well, if you are certain, Mr. Wenck, that you have nothing to do with the Service Company—we will pass on to something else.

A. They do it themselves, Mr. Bassett; the group. They are running the company.

Mr. Bassett: Would you mark this?

(Bulletin of September 10, 1958, was marked for identification as Defendants' Exhibit No. 8.)

Q. How long have these bulletins been issued, Mr. Wenck?

A. Twenty-five years.

[fol. 33] Q. Twenty-five years. Do you still issue them the same way?

A. Well, when it was a company we had, I used to put them out myself then.

Q. You had the name of the Yellow Cab Company instead of the Yellow Cab Service, Inc. on them; is that right?

A. That's right.

Q. Well, this bulletin, Defendants' Exhibit No. 8, dated September 10, 1958,—if you don't have any recollection of that, why, you just say so.

A. I have no recollection of it at all.

Mr. Little: What is the date?

Mr. Bassett: September 10, 1958.

I think the quickest way to handle this, your Honor, would be to offer these in evidence and then we will call your Honor's attention to the pertinent part of these bulletins.

Mr. Little: Certainly this hasn't been identified. He has no recollection of it.

The Court: I will sustain the objection.

Mr. Bassett: They produced them in court.

Mr. Little: That doesn't mean it is admissible.

By Mr. Bassett:

Q. Let me ask you then: Will you identify this as one of the bulletins that was issued by the Yellow Cab Service Company?

A. Yes, I would.

Mr. Bassett: All right, sir!

Mr. Little: I will withdraw the ground that I just stated and leave the other two grounds.

[fol. 34] The Court: Yes. Exhibit 8 will then be admitted.

(Defendants' Exhibit No. 8 for identification was received in evidence.)

The Court: If the other bulletins will be marked, and if they were actually given to Counsel by the other side, why, they will be admitted also at this time.

Mr. Little: Subject to the same objections?

The Court: Yes.

Mr. Bassett: Will you mark these, please?

(Colloquy.)

Mr. Little: I will stipulate as to these and the Court can order just that the same proof be made as to them, and the same objections made; and I assume the Court is going to make the same ruling? That will save time.

(Bulletins were marked for identification as Defendants' Exhibits 9 through 18, inclusive, for identification.)

The Court: It is stipulated that these are all bulletins of the Yellow Cab Service Company. The objections as heretofore made may stand as to these. Overruled. Exhibits 9 through 18 will be admitted.

(Defendants' Exhibits 9 through 18 for identification were received in evidence.)

By Mr. Bassett:

Q. I would like to call your attention, Mr. Wenck, to Defendants' Exhibit 14. This is one of the bulletins dated May 21, 1958.

A. Again, I say, I don't recall.

[fol. 35] Q. You identify that as one of the bulletins?

A. I think it is one of the bulletins.

Q. Now, I would like to read you this first paragraph and find out if you knew about the matters contained in it. This has to do—the title is, "Change of Operating Procedure. Due to economics caused by the prevalence of work stoppages throughout the area, and other economic factors such as the building trades and the seasonal pickup in employment failing to materialize as in the past years, it has become necessary for us to retrench by limiting hours of operation per cab." Who was deciding that; were you deciding that the Service Company—

A. No, the group decides that among themselves.

Q. The group was telling you how this company should be operated; is that what you mean?

A. Just a little relief here. Business is a little quiet, cuts the number of cabs on the street.

Q. Mr. Wenck, I wish you would tell me who the group is. May 21, 1958. This is very important. Who was this group?

A. It is a little difficult to remember them all by name. Well, there was one of the owners who was a director. His name is Fike. Another director, his name is Sedam. I am trying to think who these other seven men—

Q. Are there nine altogether?

A. On the operating committee?

Q. Are there nine on this committee?

Mr. Little: Seven.

A. Seven.

[fol. 36] Q. You have named two of the seven. There are five more. How are they selected?

A. By the group. They have a little meeting; usually a meeting once a month.

Q. Of the 110 operators?

A. Sure. You should attend one of those, Mr. Bassett.

Q. Let's read on and see: "We are therefore eliminating a number of jobs and all extra help will be temporarily eliminated."

A. Yes. That was the decision they made.

Q. Who did they impose that on, themselves; this group of seven?

A. No. The whole group. All of them agreed to that. That is what they wanted to do.

Q. All right. The next sentence: "Those regular drivers whose cabs are being removed from service will be placed in an extra pool and assigned shifts according to pool seniority. We are hopeful this emergency move will be for a short duration only. Everyone in the extra pool will have to leave his current telephone number with the personnel office so that he may be called for shift assignment. Under this system it is assumed that each driver will be well into the $30 booking class. This new operating procedure will become effective Sunday, May 25, 1958 at 12:01 A. M. Owners and drivers check your new schedules each day until sure of it."

Now, you say the group prepared this?

A. All of those people, these owners—

Q. What is—

A. —had a meeting and discussed this problem and ap- [fol. 37] pointed this committee, and they decided to proceed on that basis. I had no comment. I had nothing whatsoever to do about it. I made none of the decisions.

Q. Well, if they were all represented and they all did this, why was it necessary to issue this bulletin?

A. There might have been one or two that weren't there.

Q. So you issue this bulletin?

A. That's right.

Q. What is the $30 booking class?

A. I don't know.

Q. Don't you know what that is?

A. $30 a day.

Q. $30?

A. That means to bring in $30 a day instead of $15.

The Court: Now, this may be a good time to interrupt. We will recess until 9:30 in the morning.

[fol. 38]

Morning Session

October 8, 1957
9:30 A. M.

(Colloquy between Court and Counsel.)

AUGUST H. WENCK, resumes.

Direct examination (continued).

By Mr. Bassett:

Q. Were you able to compile the figures, Mr. Wenck?
A. Yes. Mr. Baiocchi is supposed to be here with them. He will be along shortly, I am sure.

Mr. Bassett: While waiting, I will go along the line that I was pursuing yesterday. Would you please mark this as the next exhibit?

(Yellow Cab News Bulletin dated June 15, 1956, was marked for identification as Defendants' Exhibit 19.)

Mr. Bassett: And would you mark this, too.

(Bulletin dated September 4, 1957, was marked for identification as Defendants' Exhibit No. 20.)

By Mr. Bassett:

Q. Showing you Defendants' Exhibit 19, Mr. Wenck, which is dated June 15, 1956, do you remember that? That appears to be a special bulletin called, "Yellow Cab News."
A. Uh huh.
Q. Do you remember that?
A. Well, I haven't read it, Mr. Bassett.
Q. Do you remember the occasion—wasn't this one of the [fol. 39] first ones you issued following the sale of the Yellow Cabs to the operators?
A. This looks like a document or a bulletin, or whatever

he refers to "Yellow Cab News," which I am sure we issued it.

Mr. Little: Give us the date.

Mr. Bassett: June 15, 1956.

The Witness: I don't know what it says.

Q. Well, I would like to call your attention to the first paragraph in particular. The heading above that first paragraph states: "To the entire Yellow Cab family," and then it says: "This is our first bulletin since last February, and a lot of water has gone under the bridge since, but one of the most significant facts of all is that most of the people who started out on this program are still with us and we are becoming more and more enthusiastic each day. We are firmly of the opinion that we have the greatest opportunity ever presented to independent owner-operators in this city. Like all good families we have our differences of opinion but we firmly believe that each was for the good of everyone; like the old saying, 'True love never runs smoothly.'"

A. You are asking me if I wrote that?

Q. Yes.

A. No.

Q. Who wrote it?

A. I don't know.

Q. Does it speak the truth? Is this one big family?

A. It certainly is.

[fol. 40] Q. The third paragraph down says: "The Board of Directors of the Yellow Cab Service Company has now formulated, and put into effect, operating rules and regulations which are now in booklet form and are ready for distribution. It is advised that everyone receive a copy of these rules and familiarize themselves with them."

Do you recall that occasion?

A. That was, no doubt, put together by this group of owners on their own behalf.

Q. It says, "The Board of Directors of the Yellow Cab Service Company."

A. There are also two members of this group on the Board.

Q. How many other members are there on the Board who are not operators?

A. Myself and two of my associates.
Q. Well, there are more than that, aren't there?
A. Five.
Q. Aren't there seven?
A. No. Five.

Mr. Bassett: Let me see the minutes.
Mr. Slemmons: There are only five.
Mr. Bassett: There are only five on the Board of Directors?
The Witness: That's right.
Mr. Bassett: Would you mark these, please.

(Bulletin of October 16, 1957 was marked for identification as Defendants' Exhibit 21.)

(Bulletin of November 27, 1957, was marked for identification as Defendants' Exhibit No. 22.)

[fol. 41] Q. We were talking about the Board of Directors and you said there were five, two operators and three of them are partners in the former Yellow Cab?
A. Myself and two others; that's right.

Mr. Little: Not partners.
The Witness: Directors of the Service Company. Partners of the old company.
Mr. Bassett: We offer in evidence Defendants' Exhibit 19.

Mr. Little: Although I think it is subject to the same objection I made yesterday, I will withdraw any objection at this time because we would like to have it in also.
The Court: All right. It may be admitted.

(Defendants' Exhibit 19 for identification was received in evidence.)

By Mr. Bassett:

Q. Mr. Wenck, does the Yellow Cab Service, Inc., the plaintiff here have traffic men?
A. The Service Company does, yes.
Q. The Service Company has traffic men?
A. Yes.
Q. What do they do?

A. They assist the owner out on the street; act as starters and do various jobs like that.

Q. Do you also have what you designate as floor men?

A. No.

Q. You don't have floor men?

A. No.

Q. Well—

A. We did have at the beginning, but we don't have any more.

[fol. 42] Q. If that term is mentioned in some of these bulletins, what would it refer to?

A. Well, at one time we operated the gas service station, and since that time we have leased it out.

Q. So you don't have floor men?

A. No.

Q. You do have a personnel manager?

A. Mr. Baiocchi.

Q. Mr. Baiocchi is the personnel manager. You have a personnel office; that is his office, isn't it?

A. Yes.

Q. And who was the traffic superintendent?

A. Who was?

Q. Who is it presently; who is your traffic superintendent?

A. We have two. One man's name is Owens and the other man's name is Russell.

Q. What are their duties?

A. Helping the owners when they act as starters at terminals and things of that kind.

Q. And they are employed by the Service Corporation, of course, and paid by them?

A. That's right.

Q. All of these people we have mentioned?

A. That's right.

Q. Now, showing you Defendants' Exhibit No. 20, is that also one of your bulletins, dated September 4, 1957?

A. I am pretty sure it is, uh huh.

Q. I would like to call your attention specifically to the first paragraph which says: "Note—special attention. The owner-operator of Cab No. 65, Mr. I. W. Sohn, has in the

[fol. 43] past had several chargeable accidents. A special meeting was called by the Board of Directors and also attended by the Accident Benevolent Fund Committee. At this meeting it was unanimously voted that this owner no longer be permitted to drive in the Yellow Cab Service organization."

Do you remember that incident and that occasion, Mr. Wenck?

A. I do, yes, sir.

Q. What became of Mr. Sohn?

A. It was resold. I think he sold it to someone before he left. I think he went back to New York where he came from originally.

Q. Well, the Board of Directors of the Service Corporation, which you have identified, took that action, took that cab away from him and sold it to someone else?

A. I didn't. The operators' committee did that.

Q. This says the Board of Directors did it. Did the Board of Directors?

A. I don't care what that says. They are the people that did it; I didn't do it.

Q. You had nothing to do with it?

A. No. I sat in on these and they asked my advice. They elected to remove him from the organization. I did not do it myself.

Q. What is to prevent you, sir, and this committee from having a permanent labor relations committee to supervise the labor relations of your organization?

A. What is to prevent—

Mr. Little: Which do you mean?

[fol. 44] Mr. Bassett: The Board of Directors. This bulletin says the Board of Directors did this.

Mr. Little: I think that calls for a conclusion, too; what is to prevent them from doing this.

Mr. Bassett: Do they want to do it at this time.

Mr. Little: I think that calls for a conclusion.

Mr. Bassett: I will withdraw the question.

Do you have any objection to this Exhibit No. 20?

Mr. Little: No.

Mr. Bassett: Except what you have already said about the others?

Mr. Little: No. I am not objecting to this one either, although I think the same objection would apply, but I am not asserting it.

The Court: Admitted.

(Defendants' Exhibit No. 20 for identification was received in evidence.)

By Mr. Bassett:

Q. Showing you now Defendants' Exhibit 21, can you identify that?

A. That looks like one of ours.

Q. I would like to call your attention to paragraph three of this one which is dated October 16, 1957: "Drinking on the job is the cardinal sin of a cab driver. Last week one of our old time regular drivers was discharged for drinking while on duty. This is an extremely serious offense and [fol. 45] there is absolutely no excuse for anyone to be found guilty of drinking and driving."

Now, who was that driver, do you remember?

A. No.

Q. What became of him?

A. I don't know.

Q. Was his cab taken away?

A. I don't know.

Q. You don't remember?

A. When was this?

Q. October 16th, about a year ago.

A. I can't remember that incident. You don't have his name, do you?

Q. It doesn't give his name here; that is why I asked you.

A. That is not the first time that has happened, Mr. Bassett.

Q. What does the Board of Directors do about that; do they get rid of him?

A. These two fellows on the Board, elected and selected by the group of owners, and these committees get together and they have meetings and they hand down the penalties. I do not do it. It is their company, not mine.

Q. Well, you told us, sir, that on this committee there were three of the partners of the old Yellow Cab Company.

A. The other two are never in town.

Mr. Little: I think you should distinguish between the Board and the Committee.

Mr. Bassett: I am talking about the Board.

By Mr. Bassett:

Q. The partners have a majority on that Board of Directors, don't they?

[fol. 46] A. Yes.

Q. If they saw fit, they could put over their program, couldn't they?

Mr. Bassett: I think that speaks for itself. You don't need to answer that.

I will offer Exhibit 21.

Mr. Little: Does it identify this driver?

Mr. Bassett: I don't know. I don't see his name at all.

Mr. Little: It says a cab driver.

The Court: He might not be an owner.

Mr. Bassett: I don't know.

Mr. Little: No objection.

The Court: It will be admitted.

(Defendants' Exhibit 21 for identification was received in evidence.)

The Court: Is the gentleman here who has the figures on sources of revenue?

The Witness: Yes. Mr. Little has them.

The Court: Maybe Mr. Bassett wouldn't want to spend too much time on this.

Mr. Bassett: This is the last one.

By Mr. Bassett:

Q. Showing you Defendants' No. 22, Mr. Wenck, is that another one of those bulletins?

A. It looks like it.

Q. Does the personnel manager have authority to fire drivers?

A. Well, I think the best way to explain that is if the owner, say a man got drunk, the owner or personnel man

ager found out about it, certainly we would penalize him [fol. 47] or dismiss him.

Q. I say the personnel manager; that is one of his duties, isn't it?

A. He does that because the owners ask him to. You wouldn't have 118 men there just hiring and firing. You have to have—

Q. Now, this is dated November 27, 1957. It refers to "Rules and Regulations Adopted at the last owners' meeting are as follows:

"Owners: 1. Owners may choose their shifts and days off.

2. Owners will designate shifts that their cabs are to be covered by drivers and owners will be responsible to see that their cabs are available for these shifts.

3. Owners must give four days' notice before changing their shifts and days off.

4. Owners must give four days' notice before changing the shifts that their cabs are to be covered by drivers."

Now, the second category:

"Drivers: 1. All drivers will be hired, fired and disciplined by the personnel manager."

That is Mr. Baiocchi, isn't it? They have designated Mr. Baiocchi to do that work for them?

A. And I think you say there it reads that this was decided at a meeting that they had?

Q. Yes, sir. And they took that action and put that power [fol. 48] into Mr. Baiocchi's hand, didn't they?

A. Apparently so.

The Court: May I ask who pays Mr. Baiocchi's salary?

The Witness: The Service Company.

The Court: The plaintiff?

Mr. Bassett: Why, yes, the plaintiff here.

We offer Exhibit 22.

Mr. Little: No objection.

The Court: It may be admitted.

(Defendants' Exhibit No. 22 for identification was received in evidence.)

By Mr. Bassett:

Q. I have just one more of these bulletins, Mr. Wenck. Defendants' Exhibit No. 10. The second paragraph refers to: "New operating committee." It says: "The new operating committee consists of Wally Peck who will serve until November 1, H. L. Hanson who will serve until November 1, and Jim Cree who will serve until December 1. Each 30 days a new owner will be appointed by the president"—now, that is you, isn't it?

A. (No response.)

The Court: The witness nodded his head.

Q. ". . . and during the last month of each man's tour of duty, he will act as chairman. This committee will meet each Thursday morning at 9:45 a. m."

Now, what is the function of that operating committee?

A. Oddly enough, I had nothing to do with appointing any of them. That was done by the directors and the group [fol. 49] themselves.

Q. Well, who decided that you would appoint?

A. I don't know. They put that in the bulletin. I did not appoint them.

Q. By the way, where are these bulletins posted; are they posted around the building?

A. No. We have a mimeograph machine, and on paydays they are put on the counter, and when the men come to the window for their checks or reports they get one of these.

Q. They are not posted on billboards in the building?

A. No.

Q. Not mailed to the owners?

A. No.

Q. Or the drivers?

A. No. Maybe there are some mailed to some people, I don't know.

Mr. Cox: What number is that?

Mr. Bassett: Exhibit 10. It is already admitted.

Mr. Bassett: I would like to introduce a group of these bulletins, without questioning the witness about them specifically, and we can call the Court's attention— ,

The Court: Let's have them all marked as one exhibit. Will that be agreeable?

Mr. Bassett: Yes.

The Court: You may mark them as Exhibit 23, and they are admitted.

(Fourteen bulletins were marked for identification as Defendants' Exhibit 23.)

[fol. 50] (Defendants' Exhibit 23 for identification was received in evidence.)

Mr. Bassett: Would you mark this, please.

(Statement of income of taxicabs was marked for identification as Defendants' Exhibit No. 24.)

Q. Now, Mr. Wenck, referring to what has been identified as Defendants' Exhibit No. 24, was the first item at the top of the page—it says, "Total turn-in by 118 corporations."

A. That is the moneys.

Q. $1,429,914.02?

A. That's right.

Q. What does that represent?

A. That represents the moneys these various owners of these corporations have turned into their Service Company to account for them or take care of.

Q. That represents the gross take-in?

A. That is what they have turned in.

Q. Between July 1, 1957 through June 30, 1958?

A. According to our accountant, that is right.

Q. And what is the yearly average for the 120 cabs?

A. He divided that figure by the 120 cabs which we operate, and that shows how much each and every cab averaged, $11,915.95.

Q. All right. The next paragraph says: "Total service charge or service corporation revenue, July 1, 1957 through June 30, 1958, $162,988.80.

A. That is the moneys that these corporations pay for the maintenance of the Service Company. I think it amounts to $26.12 a week.

[fol. 51] Q. That takes care of all salaries and rent?

A. The Service Company's expenses.

Q. The Service Company's expenses?

A. Yeah.

Q. What about deductions, Mr. Wenck, like Social Security and unemployment compensation?

A. That is all taken from that amount.

Q. Is that included in the $162,000?

A. I am sure it is. That is the revenue they have paid the Service Company. Other deductions and all are charged against the corporation.

Mr. Little: Certain deductions by the Service Company, like withholding and the like would be deducted from the first item, would it not?

The Witness: Oh, yes, I think that's right.

Mr. Little: I don't think it is very material.

The Witness: That is what I asked the accountant to give us.

By Mr. Bassett:

Q. Then the $162,988.80 represents what was paid to the Service Corporation for its services, and that covered all its maintenance work, bookkeeping, salaries and everything?

A. That's right. And the telephone.

Q. And the radio?

A. That's right.

Q. Now, the third item: "Total billings to railroads for transfers, July 1, 1957 through June 30, 1958, $1,436.55.

A. Yesterday you asked us to get that information. In connection with these railroad transfer coupons that we [fol. 52] in turn bill the railroads for, for that period it amounts to that $1,436.55.

Q. That simply represents the coupons that the railroads issued at the time passengers were picked up?

A. That's right.

Q. That item of $1,436.55 does not include other business that is done by—

A. No.

Q. —taxicabs at the railroad stations?

A. No.

Q. Does that include all railroads?

A. All railroads and docks that operate on the coupons.

Q. This item here operated on coupons?

A. Yes.

Q. "Bow Lake revenue." Bow Lake is the Seattle-Tacoma Airport, is it not?

A. That's right.

Q. And that is $141,460.80. Will you just explain briefly what that represents?

A. That represents the business taken from the Seattle-Tacoma Airport, for which we pay the Port of Seattle ten per cent.

Q. Ten per cent. This is the gross, this $141,460?

A. Gross.

Q. After the ten per cent is deducted?

A. That is the gross.

Q. Well, can you tell us, Mr. Wenck, whether that figure reflects the income paid by passengers who are taken to the airport in taxicabs as well?

A. This is for passengers that are picked up at the airport.

[fol. 53] Q. Passengers picked up. Does this include those passengers who pay going out?

A. No.

Q. That figure is not available?

A. We have no way of breaking that down. We don't break it down.

Q. "Boeing Field revenue." Now, Boeing Field is the one that was operated by—

A. King County.

Q. —King County?

A. Yes.

Q. That item is $14,601.60?

A. The same basis as Seattle-Tacoma.

Q. That includes what is paid by passengers who are picked up at the airport and brought into town?

A. Or wherever they go.

Q. Not by those who take cabs to go out to Boeing Field?

A. No.

The Court: Do you have any estimate to whether the outgoing revenue or the revenue from cabs going out to Boeing Field and Bow Lake is as much as the revenue coming the other way?

The Witness: We know it is not, because before we sold the company we made several surveys on that. As I remember, there was something like 70 per cent from the airport and about 30 per cent going out. You see, all cabs run out to the airport.

The Court: So it would be about—

The Witness: I would say 70-30. That was the tabulations we made three or four years ago.

[fol. 54] By Mr. Bassett:

Q. So that you would estimate that 70 per cent of the $141,460 would be the figure that would represent—

A. No. That is a hundred per cent from the airport.

Q. I know that is a hundred per cent.

A. Coming in.

Q. Now, going out, you say would be 70 per cent of that figure?

A. No. 30 per cent of that figure.

The Court: That is not exactly accurate. It would be figuring the combinations at a hundred per cent; this revenue listed here would make up 70 per cent.

Mr. Little: That's correct.

The Witness: That's correct, of the total revenue to and from the airport.

Mr. Bassett: I will offer Defendants' Exhibit 24 in evidence.

Mr. Little: No objection.

The Court: It may be admitted.

(Defendants' Exhibit 24 for identification was received in evidence.)

The Court: Gentlemen, just for the purpose of this airport computation, I have computed the revenue, based upon

the witness' statement,—the revenue, I should say, the cabs received going to the airports during this same period at $46,818.

Mr. Little: That, I think, is correct.

The Court: Somewhere near it, I think.

Mr. Little: Dealing with a total of about $187,000.

[fol. 55] The Court: It would be a little more than that.

Mr. Little: $188 and something.

The Court: No. $202,880.

I want to ask the witness one other question: Under this total billing to railroads for transfers, that of course is the Great Northern and Union Pacific—

The Witness: All railroads.

The Court: And it includes the Canadian Pacific Steamship, too?

The Witness: Yes.

Mr. Little: That means transfers from the station to the Canadian Pacific dock, and sometimes from the Canadian Pacific dock to the station.

Mr. Bassett: This is revenue from coupons only issued by the railroads as a part of the ticket that is sold to the passenger by the railroad company?

The Court: Yes.

Mr. Little: That's right.

The Witness: Transfer coupons.

The Court: I believe the witness has indicated that there is no computation available on other revenue from the railroad stations.

The Witness: We don't break that down.

The Court: Do you have any study that you made of that?

The Witness: No.

Mr. Little: Are we agreed on the total?

The Witness: It is a lot less than it used to be.

[fol. 56] Mr. Little: Two-hundred and two, roughly.

Mr. Bassett: It is over that. I have two-hundred and two—well, I—I got $202,479.40.

The Court: I have $202,880. I guess a hundred dollars or so is not worth arguing about.

Mr. Little: We will stipulate on that sum to save time.

The Court: All right?

Mr. Bassett: That's correct.

Your Honor, at this point I think we are perfectly willing to rest on the challenge of the jurisdiction. I think the proof now is, at least we believe it to be ample.

The Court: Mr. Little, do you have any cross examination of this witness?

Mr. Little: We do, indeed. I think for the purpose of convenience and keeping the testimony in context that I will examine him on the matters dealing with foreign commerce and this Exhibit No. 24.

Cross examination.

By Mr. Little:

Q. Mr. Wenck, does the plaintiff Service Company own or operate any property or facilities that would include cabs, outside of the State of Washington?

A. No.

Q. Does it apply for or own any permit or licenses from any agencies of the Federal Government with the exception of, I think the—

A. I think that is all.

[fol. 57] Q. —except in connection with the radio licenses from the Federal Communications Commission?

A. Nothing.

Q. Does it have any dealings whatsoever with the Interstate Commerce Commission?

A. No.

Q. Has it—I will put this all in one question. If you want me to break it down, I will. Has it, or, to your knowledge, any of the 118 corporations or the defendant union, made any application to invoke the jurisdiction of the National Labor Relations Board?

A. Not that I know of.

Q. Did it or any of the 118 corporations, or the defendant union, so far as you know, do so in connection with the matters involved in the Ayres case, if you recall that case before Judge Agnew?

A. Did the Service Company or the Yellow Cab Company have anything to do with it?

Q. No. Did they, as far as you know, invoke jurisdiction or apply for the National Labor Relations Board to assume jurisdiction?

A. No.

Mr. Little: If your Honor please, I hand to you the file in the Ayres case. I would like to have this file made a part of the record.

(Colloquy between Court and Counsel.)

By Mr. Little:

Q. Do any of the Yellow Cabs operated by the owners and drivers that are owned by these 118 corporations, do they in the regular course of business cross state lines; go into British Columbia; go into Idaho or into Oregon? [fol. 58] A. Oh, that is very, very rare. I think there has been instances when they have gone to Portland, but probably one time in two or three years.

Q. Just one time maybe in two or three years?

A. It is very, very unusual. I don't think it has happened ten times since I have been in the business here.

Q. That is since you have been in the cab business?

A. Twenty-five years.

Q. Now, let's refer for a moment to Defendants' Exhibit 24. Do you have it before you?

A. Yes, I have it.

Q. Bow Lake revenue, $141,460.80, that is from the so-called Seattle-Tacoma Airport, is it not?

A. Right.

Q. Now, based upon the surveys and your own experience or knowledge, could you give us any idea as to whether any substantial portion of that is from cabs originating at the airport and going to the Canadian Pacific dock; would there be much of such traffic?

A. I think the bulk of it comes into the downtown area.

Q. Where do they go?

A. Hotels and residential areas. They may go to railroad stations and docks, too.

Q. What in your opinion, if you can give us any estimate, would the bulk of the transportation be, of what category?

A. It is purely a guess on my part, Mr. Little. I just don't know. A very, very small percentage, I would say, goes to railroad stations or steamship lines, because these [fol. 59] people are flying. The air passengers—I think most of them either live in the community or go to hotels or somewhere downtown.

Q. Does the plaintiff Service Company have anything to do with contacting or soliciting cab customers from stations or airports or steamship companies other than under this railroad agreement and the other arrangement you have with the airport?

A. That is all.

Q. Does it advertise for business in any interstate magazines?

A. No.

Q. Or for business?

A. No.

Q. Now, what about the cabs that pick up passengers at the railroad stations, would your testimony with reference to the percentage of them going to hotels and residences rather than going to steamship companies or airports be substantially the same?

A. Oh, a very small percentage goes to other than hotels and residential districts.

Q. Now, would the same be true as to the Canadian Pacific?

A. Yes.

Q. Taking all of the factors into consideration, including Exhibit No. 24, and your testimony on direct examination and what you have testified to now, could you give us a maximum estimate which you would consider to be reasonable of your total business attributable to operations to and from railroad stations, airports and steamship companies? [fol. 60] A. I don't quite understand that question.

Q. What would you estimate to be the total maximum percentage or the range of percentage of business which is involved at airports, railroad stations and steamship companies as far as your total revenue which you have set forth on this exhibit?

A. Out of this $1,400,000?

Q. That's right.

Mr. Little: Well, perhaps I don't need to ask him that.

Mr. Bassett: I think it speaks for itself.

The Court: Just a minute. I think there is something additional included in Mr. Little's questions that would be including the revenue from the railroad stations from people who are going to hotels or homes which is not in this exhibit, and which the witness says he hasn't any figures on. I would be interested in his estimate of the total of the percentage of his business.

The Witness: It would be a wild guess on my part. I don't know. I can't give you an answer to that; I just don't know.

Mr. Little: I didn't see this until this morning, and I was trying to see if we could close any gap, but I don't think we can.

By Mr. Little:

Q. What principal airlines come in at Boeing Field?

A. West Coast.

Q. Do you pick up passengers from other airlines than West Coast at Boeing Field?

A. Only emergencies, when the weather is bad, and they [fol. 61] use that field instead of using Seattle-Tacoma.

Q. Do you know where West Coast operates, where its principal terminal is within this state?

A. Oh, I think they run to Port Angeles and Yakima and Spokane. Also I believe they go down into Idaho. I just don't know where they operate.

Mr. Bassett: They operate in three states, don't they?

The Witness: I think they run into Boise.

By Mr. Little:

Q. They run into Oregon, don't they?

A. I think that is right.

Q. While you have given these figures for Boeing Field, are you able to tell what percentage of that $14,601.00—

A. $1400—

Q. No. I am talking about Boeing Field.

A. Pardon me.

Q. $14,601.60. Are you able to tell what percentage of that revenue comes from the carrying of passengers who

have originated within the state at such places as Spokane and Yakima and Port Angeles?

A. There is no way of knowing.

Q. You couldn't say this $14,601.00 represents revenue connected with airline travel from outside of the state?

A. I don't know.

Q. Is the same true, although in lesser degree, perhaps with reference to the Bow Lake airport?

A. I wouldn't know.

Q. In other words, is there some intrastate business included in this $141,000.00?

A. Probably Spokane.

[fol. 62] Q. I wanted to ask you, is there some?

A. There is some, yes.

Q. You have no way of estimating?

A. No.

Q. Would the same apply to railroads? I am not asking about steamship companies. Would the same apply to railroads?

A. I wouldn't have any idea where they come from.

Q. Now, can you give us a comparison—since we don't have the figures on railroad taxicab revenue, except as they take passengers to the Canadian-Pacific dock—can you give us a comparison dollarwise per trip on a trip from Bow Lake in a cab to downtown, and a trip from the railroad stations, any one of the railroad stations to downtown? How do they compare, roughly?

A. Well, do you mean what is the fare?

Q. The cab fare.

A. From, say, Seattle-Tacoma to downtown?

Q. Yes.

A. Roughly five dollars.

Q. What would be the cab fare, roughly, from any one of the two railroad stations to downtown?

A. I would say a dollar, a dollar ten. Maybe I am high, I don't know.

Q. What would be the cab fare, roughly, between the Canadian-Pacific dock and downtown?

A. Ninety cents, a dollar.

Q. Is the volume of business from the railway stations increasing, remaining the same, or decreasing?

A. It decreased very materially in the last two or three [fol. 63] years.

Q. Now, I would like to go over, very briefly, without asking you to repeat any answers that you have heretofore given, I would like to examine with reference to some of your testimony on direct. As I understand, the Yellow Cab Company is and has for a couple of years, the partnership has been in the process of liquidation?

A. That's right.

Q. Is it now in the cab business in any form?

A. No.

Q. There was admitted in evidence as Exhibit No. 2 a form of conditional sales contract between the Yellow Cab partners company as a partnership—

A. Uh huh.

Q. —and the various 118 corporations. In the first whereas clause—first of all, were conditional sales agreements entered into in accordance with this form with all of the 118 corporations?

A. Yes.

Q. In the first "Witnesseth clause" it states that the Yellow Cab Company has delivered a Yellow Cab, a taxicab meter, a two-way cab radio, Seattle Taxicab Permit Number and four shares of Series 2 Common Stock of Yellow Cab Service, Inc. That was done in each instance?

A. That's right.

Q. In the second paragraph it is stated: "The second party, upon signing this contract, has paid to first party on account of the purchase price the sum of blank dollars." Was a substantial payment made by each one of them?

[fol. 64] A. Yes.

Q. It was received?

A. Yes.

Q. In paragraph three it provides that: "The balance of the purchase price"—I won't read it in detail— "is to be paid at the rate of $20 a week until the purchase price has been paid in full."

A. That's right.

Q. Have most of them made such payments?

A. All of them.

Q. Well, some of them defaulted, have they not?

A. Then we sell it to someone else. But the payments are being paid regardless of who has it.

Q. On all these 118 contracts?

A. Yes.

Q. Those payments have been going on for a period of approximately two years, have they?

A. Two and a half years.

Q. Now, in paragraph five it is provided that while the cabs are in the possession of each of the separate 118 cab companies, they shall be at the risk of the buyer—that is the 118 cab owners—and all loss of or damage to the same shall be at their expense.

A. That's right.

Q. Now, have they assumed the expense, or has the Yellow Cab Company reimbursed them for any expenses?

A. They don't reimburse them.

Q. Now, let me refer to Defendants' Exhibit No. 3. In subparagraph B on Page 2 of this agreement it is stated [fol. 65] that among other things, that you will transfer to the Yellow Cab Service Corporation, the plaintiff here, the Federal Communications license upon the approval by said Commission. Was that done?

A. That has been done.

Q. It is also stated in subparagraph three that the assignment and transfer by the partnership to the corporation of all of the stock shall be for a consideration not in excess of one dollar. It is also provided to assign and transfer to the corporation all of its Series 1 Common Stock in the name of the partnership. Was that done?

A. Well, none of these contracts are paid yet.

Q. That is upon the payment?

A. That's right.

Q. In subparagraph E on page 3, it agrees to arrange for written lease with the corporation covering the use of premises at 902 Madison Street to be transferred. That has been done?

A. (Witness nods head.)

Q. And Yellow Cab Service Corporation is in sole possession of the premises, only subject to subleases?

A. That's right.

Q. None of the 118 corporations have any leases upon the premises, or exclusive possession?

A. No. It is leased by the Service Company. There are parts of the building being subleased.

Q. Now, in subparagraph F it is agreed to sell to the operator, subject to the contract of conditional sale, and to assist in obtaining the transfer of the city permit au-[fol. 66] thorizing the operation of taxicabs in the City of Seattle. Was that done?

A. Yes.

Q. Was this plan of liquidation and sale—well, I should say sale of the taxicabs of the Yellow Cab Company, the old partnership, the sale of these 118 corporations and the organization of the plaintiff Service Company submitted to the Union? Did they know about it, what the plan was?

A. I sure hope to tell you they knew about it.

Q. When did they first learn about it?

A. They did everything in their power—

Q. That is not responsive. When did they first learn about it?

A. I can't give you an exact date.

Q. A year or two or more?

A. I would say almost two years before it finally happened.

Q. What was their reaction to it?

A. I would hate to say. It wasn't pleasant. It wasn't favorable. They were very much opposed to

Q. After that, did you present an application for the transfer of the permits to the City Council and from Yellow Cab Service to the 118 corporations of these permits, and did you—

Mr. Bassett: The permits didn't go from the Service Corporation. They went from the partnership.

Mr. Little: From Yellow Cab?

Mr. Bassett: Yes.

By Mr. Little:

Q. I was speaking of you, now. Did the Yellow Cab present this plan of sale of its cabs to the 118 corporations [fol. 67] and the organization of the Yellow Cab Service

Company with the plan to make application to transfer the permits to each of these 118 corporations? Was that presented to the City Council?

A. Yes, it was.

Q. Were representatives of the defendant local all present?

A. Yes, they were.

Q. Were copies of the agreement which I am now referring to presented to the City Counsel?

A. I can't answer that.

Q. Or summarized to them?

A. I think we more or less told them what we wanted to do and they approved our doing it.

Q. What was the City Council's action with reference to transfer of the permits?

A. They approved it.

Q. Now, subparagraph D on page 4 provides that the operator shall conform to and be bound by the Union contract provisions relating to the operation of taxicabs in the City of Seattle. What do you personally interpret that to mean?

A. We had a Union contract.

Mr. Bassett: Just a moment. I object to that.

The Court: Objection sustained.

By Mr. Little:

Q. Was there a Union contract then in force and effect between the Yellow Cab Company, the partnership, and the defendant local?

A. Yes.

Q. In subparagraph G of the same paragraph, on page 4, [fol. 68] it provided that the operators are to conform to all of the rules and regulations of the State of Washington, City of Seattle, or other governmental agencies relating to the operation of the taxicab business. Have you and the operators, the Service Company and the operators been endeavoring to conform to such rules and regulations of such governmental agencies?

A. They have to.

Q. Have they?

A. Oh, yes.

Q. In subparagraph B on page 5, it provides in substance that each will continue with the other in maintaining the present standard of the Yellow Cab service in the City of Seattle. Have you been endeavoring to maintain those standards of Yellow Cab service during the life of this agreement?

A. Yes.

Q. Has that been true substantially on the part of both the Service Company and the cab owners?

A. Yes.

Q. With some exceptions which have been pointed out here on direct examination?

A. Yes.

(Colloquy.)

Mr. Little: Will you mark this, please?

(Copy of letter dated October 22, 1956, was marked for identification as Plaintiff's Exhibit 25.)

Mr. Little: Would you mark this, too?

(Letter dated October 22, 1956, was marked for identification as Plaintiff's Exhibit 26.)

[fol. 69] By Mr. Little:

Q. Mr. Wenck, you stated that there was a labor agreement entered into in 1956 with the defendant local?

A. I think we had an agreement that was in existence at that time.

Q. That's right. And then, have you seen this letter of October 22, 1956?

A. I am sure I have.

Mr. Little: That is Plaintiff's Exhibit 26.

Mr. Bassett: Your Honor, may I interrupt just a moment? We are getting into another field now.

(Colloquy.)

(Recess)

Mr. Little: Will you mark these?

(Yellow Cab Company letter of March 26, 1956 was marked for identification as Plaintiff's Exhibit No. 27.)

(Local Union No. 465 letter of March 31, 1958, was marked for identification as Plaintiff's Exhibit No. 28.)

(Agreement was marked for identification as Plaintiff's Exhibit No. 29.)

Mr. Little: If the Court please, this letter of October 22, 1956, concerning which I was interrogating Mr. Wenck, is marked Plaintiff's Exhibit No. 25. Mr. Bassett has handed to me the original of that letter. It has been marked Plaintiff's Exhibit No. 26 by the Clerk. It is Exhibit 26 that I want to offer in evidence, considering Exhibit 25 [fol. 70] which was just marked, I would like to withdraw that because it is just a copy.

The Court: All right. Exhibit 26 will be admitted.

(Plaintiff's Exhibit No. 26 for identification was received in evidence.)

By Mr. Little:

Q. Mr. Wenck, the first paragraph of this letter says: "Attached are original and one copy of your standard form of taxicab contract relating to Yellow Cab operations, bearing the date of July 31, 1956."

Was that the new contract that was to supplant the previous contract? "One copy of the contract has been signed by Local No. 465 and each copy on supplemental pages bears the signatures of 107 of 117 Yellow Cab Corporations. The signatures of ten of these corporations have not been obtained. We understand that you will undertake the responsibility of securing the additional signatures."

Now, this was a letter dated October 22nd. Was the new contract effective as of July 31, 1956, transmitted with this letter to the Union?

A. Well, I would say it was.

Q. Now, the second paragraph says: "You will observe also that the contract has been signed on behalf of Yellow Cab Service, Inc. It is to be noted in this connection that Yellow Cab Service, Inc. does not have authorization to sign on behalf of the various Yellow Cab Companies which

have been incorporated and that it signs the agreement for the purpose of obligating itself only with respect to its employees, such as dispatchers, who are performing ser-
[fol. 71] vices on behalf of Yellow Cab Service, Inc."

Did you authorize Mr. Slemmons to make that statement?

A. Yes, sir.

Q. Are the facts contained in that statement true?

A. Yes.

Q. I hand you Plaintiff's Exhibit No. 27. Have you seen this before? It purports to be a letter from Yellow Cab Service to the Local, and attached are the signatures of quite a number of—

A. I have seen this, yes.

Q. Now, as far as you know, did the Yellow Cab Service Company ever send in any notice of termination of the contract?

A. I don't think we did.

Q. Other than as this might be construed by Counsel for the Union as being a notice of termination?

A. Uh huh.

Q. Did you continue to perform under the 1956 labor contract?

A. The Service Company?

Q. Yes.

A. Yes.

Q. I am speaking of the Service Company now.

A. Yes.

Q. In what way did you perform under it?

A. We paid the scale; lived up to the Union agreement; paid the Health and Welfare and the pension.

Q. And have you continued to do so?

A. Yes.

[fol. 72] Mr. Bassett: Are you offering Exhibit 27?

Mr. Little: No, I am not offering it. I just asked him as to whether he had knowledge of that letter. He said he did.

By Mr. Little:

Q. Now, I will hand you Plaintiff's Exhibit No. 28, which is a letter dated March 31, 1958, from the Taxicab Drivers' Union 465. Do you recall having received that letter?

A. Yes.

Q. Did you receive from the defendant Local 465 any Notice of Termination of the labor agreement with the Yellow Cab Service?

A. No.

Q. You have never received any notice terminating the agreement of 1956?

A. With the Service Company?

Q. In other words, the only communication you received that you know of is this letter of March 31, Plaintiff's Exhibit No. 28?

A. (Witness nods head.)

Mr. Bassett: You did receive this letter?

The Witness: I am sure we did. Could I see it once more, and I will be sure.

Mr. Bassett: It is addressed to the Yellow Cab Service, Inc. and all Yellow Cab Corporations.

The Witness: This is a proposal and the changes they wanted to make in connection with the contract, wasn't it?

Mr. Bassett: That's right. They told you they wanted to amend the contract, modify it.

[fol. 73] The Witness: I am sure I have seen it.

Mr. Bassett: Are you offering this?

Mr. Little: Yes, I am offering that in evidence.

Mr. Bassett: No objection.

The Court: Exhibit 28 will be admitted.

(Plaintiff's Exhibit No. 28 for identification was received in evidence.)

By Mr. Little:

Q. Now, I hand you Plaintiff's Exhibit No. 29. Can you identify what that is?

A. It is a Union agreement, isn't it?

Q. Well, what Union agreement?

A. Local 465.

Q. Yes.

Mr. Little: I think you will stipulate, won't you, Mr. Bassett, that this is the same agreement that was signed up with Farwest Cab Company and with Gray Top?

Mr. Bassett: You mean last year?

Mr. Little: The 1958 one.

Mr. Bassett: I don't know. I will have to ask my client about that. Where did you get this?

Mr. Little: I thought we stipulated to that before?

Mr. Bassett: I think last year's contract is in evidence as Exhibit No. 1.

The Court: Has Exhibit 27 been offered?

Mr. Little: I didn't offer it. I just wanted to use it in connection with interrogating the witness.

Mr. Bassett: Has Exhibit 26 been admitted?

[fol. 74] The Court: Yes.

I think 27 ought to be in evidence, too.

Mr. Little: Then I will offer it.

Mr. Bassett: No objection.

The Court: All right. Exhibit 27 will be admitted.

(Plaintiff's Exhibit 27 for identification was received in evidence.)

The Court: How about Exhibit 25?

Mr. Little: That was withdrawn because it was a copy.

The Court: That's right.

(Colloquy.)

By Mr. Little:

Q. Now, I hand you Plaintiff's Exhibit No. 29. Was that contract, with the changes indicated, submitted to the plaintiff Service Company for signature?

A. Yes.

Q. Have you signed it?

A. Yes.

Q. When did you sign it?

A. I can't remember the date.

Q. A few days ago?

A. A few days ago.

Q. It has been signed and transmitted. You authorized it to be transmitted to the Union?

A. That's right.

Q. And it was transmitted?

A. Right.

Q. They returned it, didn't they?
[fol. 75] A. That is what I understand.

Mr. Bassett: Where is the letter of transmittal?
Mr. Stemmons: To the Union?
Mr. Bassett: Yes.
Mr. Cox: You have the original.
Mr. Little: You certainly have it.

By Mr. Little:

Q. Has any other labor contract, other than Plaintiff's Exhibit 29, been submitted to you since this was submitted?
A. No.
Q. You know of no changes submitted by the Union?
A. Other than that there.
Q. Other than this Plaintiff's Exhibit 29?

Mr. Bassett: Are you going to offer this?
Mr. Little: Yes.
Mr. Bassett: I will object to it unless you detach these names, these three or four pages of corporations. Those were not our attachments.
Mr. Little: I will offer the whole thing, because it shows each of the individual taxicab companies. I think we had the original in court. There was testimony to the fact that some 19 of the Yellow Cab Companies had signed.
The Court: Gentlemen, the objection to Exhibit 29 will be overruled. It will be admitted with the understanding that the names of the separate corporations attached to this agreement were attached by the plaintiff.
Mr. Bassett: Subject to that, all right.

[fol. 76] (Plaintiff's Exhibit 29 for identification was received in evidence.)

By Mr. Little:

Q. What has been the effect of picketing of your premises, upon your operations, and speaking of Yellow Cab service?
A. Well, the Service Company first lost all of its dispatchers. Second, we have been inconvenienced by, well, for instance our furnace broke down and the repair man

wouldn't go across the picket line to repair it. Then there are the signs that the cabs have on the back. The truck driver refused to deliver and we had to go pick them up, and a few other incidents like that.

Q. Have any of the dispatchers sought other employment?

A. I am sure they have. I understand they have. I don't know positively.

Q. Are you in danger of losing experienced dispatchers?

A. I would think we are, considerable danger.

Q. How are the cab operators operating the cabs without their employee drivers? I mean, what is the situation that exists?

A. They are doing their own driving now; doing their own dispatching, the owners.

Q. You spoke of the bookkeeping services by the Service Corporation, and that each of the 118 corporations make their payments of their gross receipts into the Service Company. How are those reflected upon the books of the plaintiff Service Company?

A. The Service Company just keeps a record and does the accounting and bookkeeping for each individual corporation.

[fol. 77] Q. It does separate accounting on its books for the sole benefit of each one of the 118 corporations, or are they all lumped together?

A. Each separate corporation.

Q. So it is just a bookkeeping service which is separate for each?

A. That is all.

Q. Do any of the partners in Yellow Cab Company have any beneficial interest in any of the stock of the 118 corporations?

A. None.

Q. Are any of you officers or directors of any of the 118 corporations?

A. No.

Q. Do you, Mr. Wenck,—are you a member of the negotiating committee of the 118 corporations on negotiating labor contracts?

A. I am not.

Q. Have you ever served on the negotiating committee for labor purposes?

A. Only in an advisory capacity; just sit on it once in a while.

Q. Have you ever—

Mr. Bassett: What period are we talking about now?

The Witness: Beg pardon?

Mr. Bassett: As I understand it, you have testified you dealt with unions for 25 years.

Mr. Little: We are talking about the period from 1956 on.

[fol. 78] The Witness: I have sat in.

By Mr. Little:

Q. Do you have any authority, oral or in writing, from the negotiating committee or the 118 owners to represent them in negotiating labor agreements?

A. I do not.

Q. Have you ever attempted to represent them in negotiating labor agreements?

A. I have not.

Q. Did you in the present negotiations?

A. No.

Q. How many cabs does the Farwest system have, if you know?

A. I think a hundred.

Mr. Bassett: How many cabs does the Gray Top system have, if you know?

The Witness: I believe 41.

By Mr. Little:

Q. Just one other question, Mr. Wenck: Do Yellow Cabs take people to and from airports who are not embarking or disembarking from the planes?

A. Oh, yes.

Q. Is that substantial?

A. I would think so.

Q. People going to see people off?

A. There is a lot of that.

Q. Are you unable to give any estimate as to percentage?

A. I couldn't tell you percentagewise, no; but there is a lot of it. I would say there is quite a little of it.

Mr. Little: That is all.

[fol. 79] Redirect examination.

By Mr. Bassett:

Q. Mr. Weick, did you participate in the negotiations that led to the signing of Defendants' Exhibit No. 1?

A. I had nothing to do with that at all. The men themselves did it.

Q. You better look at it. Your signature is on it.

A. I signed this with the Service Company.

Q. Did you participate in the negotiations, Mr. Weick, as an officer?

A. What year are you talking about here?

Q. It says 1956. The contract of June 1, 1956.

A. That was the first contract that the new group entered into, wasn't it?

Q. Yes. My question is: Did you as an officer of the plaintiff corporation, or anyone else on behalf of the corporation participate in the negotiations that led to the signing of that agreement?

A. I think I was in on some of the discussions, yes.

Q. Was anybody else in on it?

A. Oh, I guess there were any number of people.

Q. Was Mr. Slemmons or any of your lawyers participating in those negotiations?

A. Could have. I can't remember for sure.

Q. One of the big problems was pensions that year, wasn't it?

A. Was that the year that came up? It is still a big problem.

Q. Yes. That is why we had the lawsuit before Judge Agnew, because the conditions of the contract and the terms [fol. 80] weren't lived up to with respect to pensions; isn't that right?

A. It wasn't my responsibility.

Q. I didn't ask you that. That was the reason, wasn't it?

A. Yes.

Q. Some of these operators weren't paying?

A. That's right.

Q. They weren't paying on some of their drivers in some instances?

A. I had no control over it.

Q. You sat by while that lawsuit was being tried right in the jury box, didn't you?

A. Uh huh.

Q. Now, do you remember how the signatures of these 118, or whatever it happens to be, were obtained; who secured them?

A. Oh, they came into Mr. Baiocchi's office.

Q. They came in and signed?

A. Came inside and signed them. I think they were all signed that way. Some might have been signed out in the street; I don't know.

Q. Some of them weren't signed and Mr. Baiocchi called them in to sign the contract?

A. I don't know.

Q. And finally when it was completed, all the signatures were on it, it was sent to the Union by the attorneys of the Service Company; is that right?

Mr. Little: It speaks for itself, the letter does.

A. If that is the way it was done, that was it. I can't [fol. 81] remember how it was handled.

Mr. Bassett: It is stipulated that Exhibit 26 was the accompanying letter?

Mr. Little: Yes, to the 1956 labor agreement.

Mr. Bassett: Yes.

Mr. Little: That's right. It speaks for itself.

By Mr. Bassett:

Q. Now, I know that this letter says that only 107 out of 117 had signed. Do you know who obtained the remaining signatures after that letter was sent?

A. No, I don't.

Q. Don't you know that Mr. Baiocchi or someone in your office finally got those signatures on the contract?

A. Could be. I don't know how they were gotten.

Mr. Little: That is not what the letter says.

Mr. Bassett: I know what the letter says.

Mr. Little: It is up to the Union—

Mr. Bassett: The Union didn't go out and get them. Do you have the original of this letter?

Mr. Slemmons: Yes, I have it at the office. I will bring it after lunch. That is the one thing I left.

Mr. Bassett: All right. Then I will hold it.

By Mr. Bassett:

Q. Have you attended the negotiations this year between the Union and the Service Company and the operators?

A. This year?

Q. Yes, sir.

[fol. 82] A. I can't remember when I attended the last one. I know there was a meeting in my office when Mr. Lancaster and your associates—Mr. Donaldson, is it?

Q. Yes.

A. And our committee. I sat there and listened in.

Q. Who was the committee?

A. Well, I think it is the present committee that we now have, five of our owners who have been selected to negotiate with the Union or talk with the Union about these negotiations.

Q. Five, and you represent the Service Corporation?

A. These five—we are talking about this Union contract?

Q. You are talking about five operators?

A. Five owners, yes.

Q. And they met with you in your office and with union representatives?

A. Didn't meet with me. They held the meeting in my office, and I sat in on it.

Q. Why was it held there?

A. A convenient place to sit down to talk and meet.

Q. Why was it appropriate for you to sit in?

A. The boys like to have me sit around and listen once in a while. I give help or advice.

Q. Is the Service Company interested at all in a Union contract?

A. I don't know about the Service Company. They have a Union contract.

Q. I asked you a question: Is the Service Company interested in having industrial peace?

Mr. Little: This is argumentative.

[fol. 83] The Court: Objection sustained. They have a legal right to do anything that they want.

Q. How many other meetings did you attend during the last few months?

A. Gosh, I can't tell you. I don't know.

Q. Don't you remember you attended two other meetings when you were talking about the grievances that arose under the old contract?

A. Where was this, at my office?

Q. Your office. You were there.

A. I might have passed some comment here in the discussions during these negotiations.

Q. Mr. Donaldson, I think, sat in on those.

A. I remember him being in on one or two. We were over at the Teamsters' office. I sat in on meetings over there.

Q. You were discussing grievances that arose under the old contract, the 1956 contract?

A. I don't recall what we were discussing.

Mr. Bassett: Would you mark this, please.

(Bulletin was marked for identification as Defendants' Exhibit 30.)

Q. Showing you Defendants' Exhibit No. 30 for identification, do you—

Mr. Little: Describe what it is.

Q. Identify that.

A. "All personnel ~~driving Yellow~~ Cabs operated by the 118 Seattle Yellow Cab Corporations."

Q. Addressed to them. Now, where was that posted?

A. In the building. We have two or three bulletin boards.

Q. Does that bear your signature?

[fol. 84] A. Yes, sir.

Q. And the signature of Mr. Sedam?

A. Mr. Sedam and Mr. Fike.

Q. Who were they?

A. Two directors.

Q. Owners?

A. Owners and directors. They requested me and asked me if I would sign it. I saw nothing wrong about it, so I did.

Q. About what date was that?

A. I don't know when it was. Is there a date on there?

Q. It doesn't seem to bear a date.

Mr. Bassett: Any objection to this?

Mr. Little: No objection.

Mr. Bassett: I offer this in evidence.

The Court: You say you have no objection?

Mr. Little: No objection.

The Court: Very well. Exhibit 30 will be admitted.

(Defendants' Exhibit No. 30 for identification was received in evidence.)

Mr. Bassett: I would like to read this to the Court: "To All personnel driving Yellow Cabs operated by the 11 Seattle Yellow Cab Corporations:

"As you know, our collective bargaining agreement with Local 465, Taxicab Drivers' and Chauffeurs' Union, expired on May 31, 1958, and we are presently operating without a contract with the Union.

"We are proposing at this time to work out conditions acceptable to the drivers while we are in the process of [fol. 85] negotiating a new contract with the Union, and until a new contract is signed with the Union, we will be operating under the following conditions, effective as of Sunday, June 8, 1958:

"We believe that any proposed pension plan should be eliminated and that the money to be paid on any proposed plan should be paid directly to the drivers in the form of a wage increase. Accordingly, we are changing the present wage scale, hours and conditions as follows:

"1. Wages shall be $11.00 per day (8½ hours) guarantee or 50 per cent of the gross revenue per week.

"2. Working shifts shall be 9 hours, less one-half hour for lunch.

"3. Week is from Sunday a. m. to Saturday p. m.

"4. Five or six-day week optional.

"5. Vacation pay shall be as follows:

a. After one full calendar year of work with a minimum of 1800 hours, employees shall be entitled to one week vacation with pay of one per cent of the individual's gross revenue for the year.

b. After three full calendar years with a minimum of 1800 hours per year, employees shall be entitled to two weeks' vacation with pay of two per cent of individual's gross revenue for that year.

"6. Health and Welfare can be continued through the Blue Cross program. The premium on this plan shall be paid by the operators, which will provide a complete and adequate Health and Welfare program. (Written information concerning the Blue Cross plan will be distrib- [fol. 86] uted.)

"7. All accumulated vacation will be paid immediately to those eligible during the year.

"Directors, Yellow Cab Service Corporation:

"A. H. Wenck.
"W. B. Sedam.
"F. E. Fike."

By Mr. Bassett:

Q. Now, you together with Mr. Sedam and Mr. Fike entered upon this program jointly, did you not?

A. I signed it. The owners brought it in to me.

Q. You agreed with it?

A. They asked me to sign it as a director. I did it.

Q. They wanted you to?

A. They and the rest of the group decided that is what they wanted to do.

Q. Supposing you had refused, what would have happened?

A. Nothing.

Mr. Little: I think it is argumentative.

Mr. Bassett: I want to know.

The Court: Counsel made the objection that it was argumentative. The witness answered, however. The answer may stand.

I am not sure what you mean by "nothing", Mr. Wenck. You mean that the bulletin would not be posted?

The Witness: I mean that program would have gone into effect whether I signed it or not. I wouldn't have done anything about it, or couldn't have.

[fol. 87] By Mr. Bassett:

Q. Now, this says that this program will be adopted commencing June 8, 1958.

A. I think they did.

Q. And so—when do you understand from that, sir, that this was posted?

A. Probably a day or two prior to that.

Q. A day or two or a week prior?

A. I think so.

Q. Well, I think this speaks for itself. This was after the cancellation of the old agreement, March 28, 1958.

A. The other was dated June—

Q. That happened after you signed this letter, Plaintiff's Exhibit No. 27?

A. It must have, certainly, when we didn't have any contract.

Q. You had no contract—

Mr. Bassett: Will you mark this, please.

(Local Union 465 letter dated May 27, 1958 was marked for identification as Defendants' Exhibit No. 31.)

Q. Defendants' Exhibit 31 for identification is a letter addressed to Yellow Cab Service, Inc., by the defendant Union. Do you remember receiving that or seeing it in your office? It gives the date as May 27th.

A. "On March 26, 1958, this Local Union was notified that the Yellow Cab Service, Inc., and all Yellow Cab Corporations were terminating the agreement with this Local Union. It was stated in that notice that the above

were willing to negotiate a new contract." Yeah, I remember receiving that.

[fol. 88] Mr. Bassett: We offer Defendants' Exhibit 31.

Mr. Little: No objection.

The Court: Exhibit 31 will be admitted.

(Defendants' Exhibit 31 for identification was received in evidence.)

Mr. Bassett: Would you mark this, please.

(Local Union 465 letter of May 27, 1958, was marked for identification as Defendants' Exhibit 32.)

Mr. Bassett: And, you might as well mark this, too.

(Yellow Cab Company letter dated June 2, 1958, was marked for identification as Defendants' Exhibit No. 33.)

Q. Showing you Defendants' Exhibit 32 for identification, which is a letter dated May 27, 1958, from the defendant Union, addressed to Yellow Cab Corporations, 902 Madison Street, Attention of William Hawkins, Chairman of the Negotiating Committee, I will ask you if you recall seeing that letter which was taken from your correspondence file which was brought here by Counsel?

A. I remember getting this, or seeing it.

Mr. Bassett: We offer Defendants' Exhibit 32.

I may say to the Court—

Mr. Little: No objection.

Mr. Bassett: —this letter is identical in language as Exhibit No. 31. This one, Exhibit 32, is addressed to the corporations, while Exhibit 31 is addressed to the Yellow Cab Service, Inc.

Mr. Little: We have no objection. One is addressed to the plaintiff separately and the other to the 118 cor[fol. 89] porations.

The Court: Exhibit 32 will be admitted.

(Defendants' Exhibit No. 32 for identification was received in evidence.)

Q. Referring to that last letter I showed you addressed to the corporation, how did you happen to have that in your correspondence file?

A. Oh, I think all this correspondence between the Unions—they have a file there. I think we brought it down here. I didn't have it.

Q. It was in the corporations' file, wasn't it?

A. It is in the office there where they keep all of this correspondence between the Union and themselves.

Q. Showing you Defendants' Exhibit No. 33, which is a letter on the stationery of Yellow Cab Company, dated June 2, 1958, addressed to the defendant Union, signed by William Hawkins, Chairman, Union Negotiating Committee, I will ask you if you are familiar with that letter?

Mr. Little: What was the date?

A. Well, they just agreed to meet.

Q. Are you familiar with the letter?

A. I knew they were having meetings.

Q. No. The letter.

A. That is some old Yellow Cab stationery that the boys used.

Mr. Basset: I offer it.

(Objection.)

The Court: I will admit it.

(Defendants' Exhibit 33 for identification was received in evidence.)

[fol. 90] By Mr. Bassett:

Q. Mr. William Hawkins, the signer of this letter, I take it, is an owner?

A. Yes.

Q. He is a member of the negotiating committee?

A. Chairman.

Q. Chairman of it?

A. Yes.

Q. Do you know who the other members of the negotiating committee were?

A. I think so. I have them here.

Q. How did you happen to have that written out this morning, Mr. Wenck?

A. You asked about some names yesterday, so I thought I would have them for you today.

Q. Thank you.

A. The negotiating committee—

Q. Who is on it?

A. Mr. Hawkins is chairman. There is a Mr. LaBissoniere, Mr. Fike, Mr. Sedam, and Mr.—the big fellow's name—Shavlan.

Q. Who else?

A. Five of them. That is it.

Q. That is all?

A. They meet with the rest of the boys and decide what they want to do.

Mr. Bassett: We offer Exhibit 33.

Mr. Little: I thought it had already been admitted.

Mr. Bassett: Yes.

Would you mark this, please.

[fol. 91] (Copy of letter dated June 5, 1958, was marked for identification as Defendants' Exhibit 34.)

Mr. Bassett: I think this is a letter that we will have to ask Mr. Baiocchi about, but I will ask this witness.

Q. Showing you Defendants' Exhibit 34 for identification, I will ask you if you are familiar with that.

A. It is something Mr. Baiocchi did. No, I am not familiar with it. Never saw it before.

Mr. Bassett: We will ask Mr. Baiocchi about that.

Would you mark this, please.

(Letter dated June 10, 1958, was marked for identification as Defendants' Exhibit 35.)

Q. Showing you Defendants' Exhibit 35, I will ask you, sir, if you signed this together with Mr. Baiocchi and Mr. Sedam?

A. That is my signature.

Q. It is a letter addressed to Mr. George Lancaster, Teamsters' Hall, dated June 10, 1958.

A. Signed Yellow Cab Corporations. Again, they asked me to sign the letter. I can't tell you what is in it.

Q. You say "they"—

A. Our group of people.

Q. Mr. Sedam and Mr. Fike are dictating to you?

A. I am not dictating to them.

Q. I wish you would read it and tell me whether you agreed with the matters stated in that letter.

A. Yes, I remember they had quite a discussion over this.

Q. You agreed with the contents of it before it went out?

[fol. 92] A. They asked me to put my name on it.

Q. You didn't agree with it?

A. I didn't have any comment. It wasn't any of my affair.

Mr. Bassett: Any objection to Exhibit 35?

Mr. Little: I don't think it is material, but I certainly won't object to it. I will be happy to have you offer it.

Mr. Bassett: All right. This is another letter, your Honor, that is written on the stationery of Yellow Cab Company, on which Mr. William Hawkins wrote Defendants' Exhibit 33.

The Court: All right. 35 will be admitted.

(Defendants' Exhibit 35 for identification was received in evidence.)

Mr. Little: I might say that I still object to the relevancy of Yellow Cab stationery being used. It is of no relevance whatsoever.

Mr. Bassett: It might have a little bearing on it.

The Court: We will recess until 1:30.

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[fol. 93] Afternoon Session

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By Mr. Bassett:

Q. Mr. Wenck, referring to the tri-party agreement that Mr. Little questioned you about certain clauses contained in that agreement, I think among some of the questions was this one: Did you—this is on page 3, part 2. It says: "The operator agrees as follows:"—and then, under "g"

it says: "To conform to all of the rules and regulations of the State of Washington, City of Seattle, or other governmental agencies relating to the operation of the taxicab business."

A. Yes.

Q. You said to him the operators have complied with that?

A. Yes.

Q. And I do not recall whether he asked you about "h"?

A. No, not "h".

Q. "To maintain the operator in good standing as a corporation in accordance with the laws of the State of Washington and of the United States." Have the operators done that?

A. The operator agrees—

Q. Have they done it?" Mr. Little asked you if they had complied.

A. I said, yes, they had.

Q. With the city and state regulations?

A. Yes.

Q. You say they have complied with "h"?

A. Yes.

Q. Now, in that connection, I want to ask you if the [fol. 94] operators have performed what is required by subdivision D which says: "To conform to and be bound by the Union contract provisions relating to the operation of taxicabs in the City of Seattle." Did they do that during 1956 and 1957?

A. They did it as long as—

Q. Until the contract term ended in 1958?

A. We had a contract. They took over in February and the contract, I think, was renewed in June, wasn't it? 1956. It was renewed in June.

Q. Began to operate under this contract in June of 1956, and that continued—

A. I don't know whether it was kept up with or not.

Q. You don't? Well, you know, don't you, Mr. Wenck?

A. I think they probably did.

The Court: Excuse me just a minute.

(Discussion off the record.)

Q. Now, the 1956 contract, as you know, contained a provision requiring the employers to contribute to the Teamsters' Union Pension Plan?

Mr. Little: Is that the new contract?

The Witness: That is the new contract. When we sold I think it was in February, and this new contract was with respect to the pension. It was entered into in June of 1956.

Q. I am not talking about the Yellow Cab Company contract; I am talking about Defendants' Exhibit No. 1.

A. Well, what is Exhibit No. 1?

Q. This is the first contract that the Service Corporation—

A. All these people?

[fol. 95] Q. Yes, and the Service Corporation.

A. What was your question?

Q. Did that provide for pensions?

A. I think it did.

Q. All right. Now, the question is: Didn't some of the operators at least fail to pay the pension?

A. I don't think any of them—

Mr. Little: I object to this, because this contract, subparagraph d on page 4 clearly relates to the contract which was in existence and not to the contract that he is talking about here.

Mr. Bassett: Well, all right. It clearly relates to the old contract. I am glad you said that, Mr. Little.

Do you say that related to the rules and regulations of the State of Washington, City of Seattle, and other governmental agencies relating to the operation of taxicabs as of that date and not any future date?

Mr. Little: Subparagraph d relates to the Union contracts provisions which were then in existence.

Mr. Bassett: It doesn't say "in existence."

The Court: Gentlemen, this matter has been suggested by Counsel from the very start of this case, as to two different possible interpretations. I think I will permit either Counsel to make a record on this, reserving the question of which is the proper interpretation until later on if it should become necessary to ever reach that.

Mr. Little: That is satisfactory.

[fol. 96] Mr. Bassett: I think that matter of interpretation would apply to g and h.

By Mr. Bassett:

Q. Now, you say that none of them complied with the provision relating to the contributions for the payment of pension premiums?

A. None of them.

Q. Is that what you said, I am asking you.

A. I don't think they did.

Q. Did the—

A. By that, the funds have not been turned over to the Pension Fund.

Q. Did the plaintiff here, the plaintiff corporation, the Service Company, deduct each week or each month for the payment of those premiums and retain it in a fund?

A. On their own employee drivers, yes; not on the owners.

Q. I am talking about the drivers.

A. That's right, hired drivers.

Q. But that money was never paid as required by the contract to the trustees for the Teamsters' Union on this pension plan?

A. No.

Q. It wasn't?

A. Never was.

Q. It is being held in escrow during all this time?

A. It is in a savings account.

Q. Who is holding it, the Service Company?

A. Oh, I don't know. It is in a savings account at the Peoples Bank, drawing 2½ per cent interest. I took the money over and put it in the bank, because I didn't want to give it to the Pension Fund. I was told not to give [fol. 97] it to the Pension Fund.

Q. Who told you not to do it?

A. The whole group.

Q. The lawyers?

A. We had meetings on it and they said, "Don't turn it over."

Q. And that is still being held in escrow, isn't it?

A. You bet you.

Q. Was that a part of the dispute that the Union had with the operators and the suit that was before Judge Agnew?

Mr. Little: He has already answered that.

Q. That is so, isn't it?

A. Yes.

Mr. Cox: You are talking about payments on the drivers?

The Court: I wonder, gentlemen, if we are getting beyond the jurisdictional question?

Mr. Bassett: I don't think we are, your Honor. It goes to the matter of grievances. No, that has been in issue between the Union and the Service Company and the operators, to why that money hasn't been paid.

The Witness: The Service Company is not involved in this thing. It is the 118 corporations we are talking about. The Service Company paid its pension for its employees all the time.

By Mr. Bassett:

Q. Did you attend any meetings with the committee with the union representatives in an effort to settle that issue, whether that money should be paid or not, in the spring of this year?

A. I don't know whether I was at any meetings or not. [fol. 98] but it isn't up to me to say whether they should or should not.

Q. That is not the question. I am asking you if you did appear, sir.

A. I might have been to the meetings.

Q. Would you say that was in April of this year?

A. I don't know when it was.

Q. Well, in your recent negotiations on a new contract —when I say "you" I mean the Service Company and the operators—was that matter of this unsettled grievance discussed as a part of the negotiations about a new contract?

A. I can't answer that because I wasn't at any of those meetings on the new contract.

Q. You weren't?

A. No. The committee has been handling that.

Q. Were you there on any of these new meetings?

A. I don't think so.

The Court: Let me review this. As I understand it, your ten employees, or whatever number they are, all their deductions or amounts that should be paid into the Pension Fund on their behalf have all been paid?

The Witness: Right.

The Court: However, the amounts due from the 118 separate corporations have been paid into a trust fund held in a savings bank, put there by you awaiting final decision on what type of contract would be entered into in the future?

The Witness: That's right.

[fol. 99] The Court: And those pension deductions, if I may refer to them in that language, extend from how far back?

The Witness: I think June 1, 1956.

The Court: Ever since this contract?

The Witness: I think that is right.

The Court: And has been—

Mr. Cox: January 1, 1957.

The Witness: Then, January 1 of 1957.

Mr. Bassett: I think it became effective, your Honor, the following January 1st.

By Mr. Bassett:

Q. How much is in that fund, Mr. Wenck, approximately?

A. The January 1, 1957, to the end of 1957, I think amounted to $50,000 or $51,000.

Q. Now—

A. Or until June of this year. There is about $60,000 in that account. That belongs to these owners; it is their money.

Q. Now, that issue hasn't even been resolved yet, as to whether the money should be paid to the Union under the terms of the contract or not.

A. I think you said before when we were in court here that wasn't the issue involved.

Q. No. The Union was claiming that contributions should also be paid on the part of the owners because they also drove cabs. But at the trial the Union said it would withdraw that and wouldn't require any owner to contribute to the pension fund; isn't that right?

A. Well, I don't recall what they said about it.

[fol. 100] Q. But the Union, during the negotiations on the new contract, was still claiming that the money deducted, which you say is held in escrow now for the drivers, should be paid?

A. I don't know. I haven't been in on these new negotiations, Mr. Bassett.

Q. All right. You don't know.

The Court: Now, your purpose in going into this, Mr. Bassett, is to show there is presently a labor dispute involving this Pension Fund?

Mr. Bassett: Yes, that's right. That is a part of it. I was trying to show that they sat in on those negotiations and participated in them.

The Court: Yes.

By Mr. Bassett:

Q. Mr. Little asked you about advertising, whether you advertised in magazines, national magazines, I believe?

A. Uh huh.

Q. And your answer was, no. You do advertise locally here, do you not?

A. Very, very little.

Q. And who handled the advertising, the Service Corporation?

A. Well, I think the committee—I suggested to them that they might consider taking a little larger space in the classified section of the telephone directory. I don't recall whether—I think we took a little larger section, and they thought that was the thing to do. It cost them a little more money, and they agreed to do it among themselves.

Q. Of course, the advertising is charged to them?

[fol. 101] A. A Service Company expense, yes.

Q. Do the partners who sold these cabs and are presently holding conditional sales contracts, are they engaged in operating Yellow Cab businesses in the State of Oregon?

A. Yes, some of them are.

Q. And some of the partners also engage in operating Yellow Cab business in California?

A. That's right.

Q. Now, does the Service Corporation here issue script that may be used by passengers who patronize the cabs?

A. Have for many, many years.

Q. I understand that. And what is mean by script?

A. Well, it is a coupon. It has a five cent—

Q. You sell a book?

A. Sell a book of script. It is a coupon book.

Q. And the driver takes out as much as the trip calls for?

A. That's right. Like the clubs used to have at the bar.

Q. At the bar. They still do that.

A. They do?

Q. I think so. At least the last time I was there.

Now, can the script be used in Oregon and in California? Will the Yellow Cab Company accept it down there?

Mr. Little: We will admit that.

A. Oh, sure.

Mr. Little: They are just like credit cards and so forth.

Mr. Bassett: Good enough.

The Witness: We accept theirs, too, Mr. Bassett. It is sort of an exchange deal between all these companies.

[fol. 102] Q. If somebody from California came here with script issued down there, you would accept it here, wouldn't you?

A. Yes.

Q. That is true of those coming up here from Oregon?

A. That's right. And our script book being presented down there.

Q. Now, these agreements, Exhibits 2 and 3, either one or both of them provide for the issuance of stock to the operators, stock of the Service Company; is that right?

A. Yes.

Q. A certain number of shares?

A. That's right.

Q. Now, under the terms of these agreements, were the operators required to pledge that stock back to the partners as security for the performance of the contract?

A. The stock, as I understand it, Mr. Bassett, is in escrow until they complete the payment of their conditional sales contract, at which time it so states in this agreement that it will be turned over to them for one dollar.

Q. You mean it is held as security by the partners pending the performance of the contract?

A. It is collateral security on their conditional sales contract.

Q. And was a pledge signed by the owners at the time of the sale, pledging the stock?

A. They signed this contract that you have there. I [fol. 103] don't think they signed anything else. I don't know whether you call it a pledge or what.

Q. Did you have an owner by the name of Mr. Weise?

A. I just heard of him recently.

Q. Do you know whether he is still an owner?

A. No. He was delinquent, so we removed him from the organization.

Q. Someone else bought out his stock and the equipment?

A. That's right.

Mr. Bassett: Would you mark this, please.

(Pledge form was marked for identification as Defendants' Exhibit 36.)

Q. Showing you Defendants' Exhibit 36, do you recognize this as a pledge that was signed by each of the owners, pledging their stock in the Service Corporation to the partners of the Yellow Cab Company?

A. I have never seen this before. I don't know anything about it.

Q. Have you seen one like it?

A. Never.

Q. Never seen that form?

A. "The undersigned further has"—

Q. You are one of the partners referred to in it.

A. Well, all the partners are referred to it. I don't think I have ever seen it.

Mr. Bassett: Mr. Little will probably admit this.

Mr. Little: We probably will, to save time.

The Witness: I don't think I have ever seen it.

[fol. 104] Mr. Little: Mr. Bassett, it doesn't appear to be one we prepared.

(Colloquy.)

Q. Mr. Wenck, do you know anything about Plaintiff's Exhibit No. 29, which is a new contract that your lawyers returned to us?

A. Do I know anything about it?

Q. Yes.

A. Well, the certain number signed—

Q. No. The circumstances under which it was sent to us. It was sent with a letter. Do you know anything about it?

A. Yes.

Mr. Bassett: I think I will ask Mr. Slemmons about it. He will be able to tell us more about it.

I have no further questions of this witness.

**Recross examination.**

By Mr. Little:

Q. First, you testified about the coupons that are used up and down the Pacific Coast.

A. Script books, yes.

Q. Do Yellow Cabs operating in the State of Washington receive any profit from the use of script books in Oregon and California?

A. No.

Q. Is it a mere courtesy?

A. It is an exchange.

Q. For?

A. I think they charge us five per cent discount and I [fol. 105] think we do likewise, something like that.

Q. Handing you Defendants' Exhibit No. 30, and this is the only exhibit that I want to call your attention to on recross, because it was introduced by Mr. Bassett since I interrogated you, you will note at the top it says: "To: All personnel driving Yellow Cabs operated by the 118

Seattle Yellow Cab Corporations." Was this, as far as you know, sent to them or given to them shortly after—well, I think you said shortly after June 8, 1958.

Mr. Bassett: He said it was posted on the bulletin board.

The Witness: Given to the Union?

Mr. Little: No, to the drivers.

The Witness: I think it was just a bulletin handed out. No, this wouldn't be a bulletin handed out. We wouldn't sign all those bulletins. It was probably put on the bulletin board. There were probably four or five around the building.

Q. You will note that you state in the second paragraph that you are proposing at this time to work out conditions acceptable to the drivers while we are in the process of negotiating a new contract with the Union. Then you also suggest that accordingly you are changing this—this is in the third paragraph: "Accordingly, we are changing the present wage scale, hours and conditions as follows:" and then you have some seven numbered paragraphs relating to the changed conditions. Were those changes put into effect, as far as the drivers were concerned of the 118 corporations?

[fol. 106] A. As far as I know, yes.

Q. Were they put into effect as far as the dispatchers and any other employees of the Yellow Cab Service?

A. This has nothing to do with the dispatchers, Mr. Little. This only has to do with the drivers.

Q. Does it have anything to do with any employees of Yellow Cab Service?

A. No.

Q. And no changes were put into effect as listed here in as far as Yellow Cab Service employees?

A. Only to the drivers.

Q. You don't continue to operate under the existing Union agreement?

A. That's right.

Mr. Little: That is all.

Further redirect examination.

By Mr. Bassett:

Q. Mr. Slemmons has just handed me—

Mr. Bassett: Would you mark this, please.

(Pledge form was marked for identification as Defendants' Exhibit 37.)

Q. Mr. Slemmons has just handed me what has been marked Defendants' Exhibit No. 37. It is a form of pledge, the pledge that we were talking about a little while ago pledging the stock.

A. Well, Mr. Slemmons would know more about it than I do because undoubtedly he prepared it.

Q. You don't have any recollection of that?

A. Well, there are so many documents we are putting in [fol. 107] this thing that I just don't know the details about all those.

Q. I notice on the Yellow Cabs going around the street—I saw one today and on the back of the tire there is an advertisement for Standard Oil Company.

A. Yes.

Q. And those change from time to time, don't they?

A. Right.

Q. Who makes the arrangements for that kind of advertising, does the Service Corporation do that?

A. No. That is an agreement or arrangement that was in effect, oh, for several years. It has been in effect for several years.

Q. Well, does the advertiser pay anything for that?

A. That is a Standard Oil advertisement?

Q. When advertisements of that kind appear on the back of Yellow Cabs, does the advertiser pay something for that service?

A. Yes, sir.

Q. And during the last two years who has it been paid to?

A. The Service Company.

Q. Paid to the Service Company?

A. Yes, sir.

Q. And do the operators get the benefit of that kind of income?

A. Yes, sir.

Q. They do?

A. Yes, sir.

Q. How do you allocate it?

A. It goes into the Service Company pot or fund. It is their money. It is their Service Company, and we or none [fol. 108] of the partners touch it.

Q. Do you mean to say that the Service Company doesn't get anything?

A. They get it all.

Q. They get it all. Do you mean to say that it will all accrue to the benefit of the operator?

A. The 118 corporations. It is theirs; lock, stock and barrel of it.

Q. Why is the Service Company interested in making arrangements for that kind of advertising if it isn't beneficial to the Service Corporation?

A. Well, the Service Company is 118 corporations. They own it. It does make those business transactions for them.

Mr. Bassett: All right, sir. Thank you.

Mr. Little: No questions.

The Court: I want to ask him about this last statement. Did you mean just that, that the Yellow Cab Service Company is 118 corporations?

A. They own it; that is what I mean. These men are buying and own the Service Corporation, which is the thing that does their accounting and that sort of thing.

The Court: Each has so many shares of Series 2 stock?

The Witness: That's right. Each one has 120.

Mr. Little: We admit that Yellow Cab partners own the majority of the stock pending the liquidation and the payment of the conditional sales contract.

[fol. 109] The Court: Has anybody paid up his conditional sales contract?

The Witness: No.

The Court: None of them have?

The Witness: No.

The Court: Is there any practical reason for that? That is, for their failure to pay up for just economic reasons?

The Witness: He wants to make it as he goes, you know.

The Court: The rate of interest on the third payment is 7.—

The Witness: .8 per cent.

The Court: That is a pretty high rate of interest. I wonder why they don't pay up and get out from under.

The Witness: They can if they want to. They have that right.

The Court: Nobody has done it?

The Witness: Nobody has yet.

Mr. Little: Do you know how that compares with the interest rate on the sale of other cabs?

The Witness: No, I don't, but I have heard a lot of stories about it. I just don't know. It is very reasonable. You can't buy an automobile on a conditional sales contract for that kind of interest. This is simple interest, your Honor.

The Court: Yes. All right. Thank you.

Mr. Bassett: I am going to ask just one question in con- [fol. 110] nection with your Honor's question. The question was, has anyone paid up in full on these conditional sales contracts. I will ask you, if you know, sir, how many of the original 118 corporations are sold out to other operators?

The Witness: Well, I would guess that 80 per cent of the original purchasers are still there and tickled to death with their deal, and going right along.

Mr. Bassett: Twenty per cent of them have sold out to others?

The Witness: They done a little trading around and what not.

Mr. Bassett: Have some of them changed hands more than once?

The Witness: Yes.

Mr. Bassett: I think that is all.

Mr. Little: I think that is all.

(Witness excused.)

Mr. Bassett: Mr. Slemmons, I would like to ask you a couple of questions.

WARREN SLEMMONS, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Bassett:

Q. First of all, I show you Defendants' Exhibit 37 for identification. I think that came from your file. It is called a pledge.

A. This is the standard form of pledge that was used in [fol. 111] each instance involving these cab corporations.

Q. And what was the purpose of the pledge, what was the purchaser pledging?

A. The purchaser was pledging not only the stock in his small Yellow Cab Corporation, but the stock in Yellow Cab Service, Inc., in connection with the purchase of a cab from the old partnership.

Mr. Bassett: I am sorry, I didn't have you identify yourself.

Q. Will you state your name for the record?

A. Warren Slemmons. My address is 15th Floor Hoge Building, Seattle.

Q. Your profession?

A. I am an attorney; in a most unusual spot, I might add.

The Court: The Clerk would like to know where you live.

The Witness: 2119 Waverly Way, Seattle.

Q. You are one of the attorneys for the plaintiff Service Company?

A. Yes, sir.

Q. You did not represent the operators when they brought that lawsuit before Judge Agnew?

A. They employed independent counsel for that.

Q. They had a firm by the name of Lambert?

A. Lambert & Moody, I believe.

Mr. Bassett: We offer Exhibit 37 in evidence.

Mr. Little: No objection.

Mr. Cox: No objection.

The Court: Exhibit 37 will be admitted.

(Defendants' Exhibit 37 for identification was received in evidence.)

[fol. 112] The Court: Would you let me see Exhibit 37, Mr. Clerk?

(Clerk hands exhibit to the Court.)

Mr. Bassett: Would you mark this, please.

(Letter to George Lancaster, October 3, 1958, was marked for identification as Defendants' Exhibit No. 38.)

Q. Showing you Defendants' Exhibit 38, I will ask you if that is a letter that you addressed to Mr. Lancaster?
A. It is.
Q. Dated October 3, 1958?
A. That's correct.
Q. Was there something accompanying that letter?
A. Attached to this letter was a standard form of agreement which bore the signature of Yellow Cab Service, Inc., by its president Mr. Wenck, and the signatures of 19 independent Yellow Cab Corporations. I am reading from the letter.

Mr. Bassett: Any objection to this?
Mr. Cox: No objection.
Mr. Bassett: We offer Exhibit 38.
The Court: Exhibit 38 will be admitted.

(Defendants' Exhibit 38 for identification was received in evidence.)

Mr. Bassett: Would you mark this, please.

(Agreement was marked for identification as Defendants' Exhibit No. 39.)

Q. Exhibit 39 is the document that you just referred to as being enclosed with your letter, Exhibit No. 38?
A. This is the attachment to Exhibit 38.

[fol. 113] Mr. Bassett: We offer Exhibit 39.
Mr. Cox: No objection.
The Court: It will be admitted.

(Defendants' Exhibit 39 for identification was received in evidence.)

Mr. Bassett: Would you mark this, please.

(Letter dated October 6, 1958, was marked Defendants' Exhibit No. 40 for identification.)

Q. I will ask you whether this is Mr. Lancaster's answer to your letter?

A. This is Mr. Lancaster's answer to my letter.

Q. Did he return the contract which you had sent him with that letter?

A. He returned the contract with this letter.

Q. This is Exhibit No. 39?

A. Exhibit No. 39.

Q. He returned that to you?

A. That's right.

Mr. Bassett: We offer Exhibit No. 40.

Mr. Cox: We have no objection to the letter as indicating that it was sent and conveyed this information. Of course, it contains certain statements which might be assumed to be statements of fact. We would take the position that to prove those matters Mr. Lancaster would have to be sworn to testify.

Mr. Bassett: Well, I will read Mr. Slemmons' letter first to your Honor, and Mr. Lancaster will reply concerning this document, Exhibit No. 39.

The Court: On Mr. Cox's statement we will admit Defendants' Exhibit No. 40, and you may read it.

[fol. 114] (Defendants' Exhibit No. 40 for identification was received in evidence.)

Mr. Bassett: I shall read to your Honor Exhibit No. 38, which is Mr. Slemmons' letter to Mr. Lancaster.

"Dear Mr. Lancaster:

"You will recall that some question has been raised by Mr. Bassett as to the willingness of Yellow Cab Service Company, Inc. to enter into the standard form of labor contract which, as I understand it, prevails in other cab operations in Seattle. In this connection, I enclose your standard form of agreement which bears the signature of Yellow Cab Service, Inc. by its president, Mr. Wenck, as well as the signatures of 19 independent Yellow Cab Corporations. It

will be appreciated of course that we have not had an opportunity to determine whether other separate Yellow Cab Corporations desire to enter into the agreement because of the inability to reach the parties involved during the current picketing of the premises at 902 Madison Street, Seattle.

"You will realize, I am sure, that it is our belief and often expressed opinion that Yellow Cab Service, Inc. acts solely for itself and not on behalf of the other Yellow Cab Corporations.

"Very truly yours,

"Warren R. Slemmons."

[fol. 115] Now, may I have Exhibit No. 40? I will now read, your Honor, Exhibit No. 40, which is Mr. Lancaster's answer to that letter, dated October 6, 1958.

"Dear Mr. Slemmons:

"I have received your letter of October 3, 1958 together with the enclosures.

"Please be advised that Local 463 will not enter into a separate contract with Yellow Cab Service, Inc. and 19 of the purchasing corporations. First of all, the signing of the standard form of agreement will not settle our present dispute with the Yellow Cab enterprise. As you know, from your participation in the negotiating sessions, we still have unresolved several grievances which arose under our old contract, including the payment of pension premiums on the drivers. Also unresolved is the matter of procedure which will be used to resolve day-to-day grievances under the new contract, and the part that Yellow Cab Service, Inc. will play in the settlement of these disputes. Secondly, Local 463 will not be put in the position of signing an agreement with only part of the Yellow Cab enterprise. If we should agree to negotiate with Yellow Cab Service, Inc. and each purchasing corporation separately, it would mean the destruction of the Union. Such traditional concepts as sen- [fol. 116] iority and Union security would be meaningless. The only practical and effective way to negotiate and administer a collective bargaining contract with the Yellow

Cab enterprise is to insist that Yellow Cab Service, Inc. and the purchasing corporations act as a group. This is the way we have negotiated in the past, and up until the time the present lawsuit was initiated, this is the way we were negotiating this year. This is also the way we have negotiated collective bargaining contracts with the rest of the Seattle Taxicab Industry. You will be interested in knowing that at the special membership meeting of Local Union 465 held on Monday, September 22 that it was moved and seconded that the negotiating committee be instructed to conform to the procedure already established and to 'sign only master contracts' with taxicab fleet operations; this motion carried unanimously.

"If Yellow Cab Service, Inc. and the purchasing corporations wish to resume negotiations in an effort to resolve this dispute, Local 465 is most willing to cooperate. It is difficult however, to negotiate freely when you have placed our dispute in the Superior Court for King County. We suggest that Yellow Cab Service, Inc. dismiss the lawsuit [fol. 117] and that, thereupon, negotiations be resumed, preferably under the auspices of the Federal Mediation and Conciliation Service.

"I am returning the contract which was enclosed with your letter.

"Very truly yours,

"George Lancaster,
"Secretary-Treasurer,
"Local Union No. 465."

By Mr. Bassett:

Q. I have just one or two more questions, Mr. Slemmons. Did you appear before the Federal Mediation and Conciliation Service in connection with the dispute concerning the contract which was being negotiated?

A. May I answer it this way?

Q. Answer it any way you want.

A. Perhaps I should give you a little background, Mr. Bassett. I received a call from Mr. Wenck, who has testified in this matter, indicating that pickets were out in front of

902 Madison, our headquarters of Yellow Cab Service. He advised me that it was his—he had been told, as I understand it, that there was a hearing before the Mediation Board, and asked me if I could inquire about it. I did so. I called Mr. McPherson, who is the person particularly interested with the Mediation Board, and he advised me that his initial hearing was with the group involved with Farwest and that we were not invited.

Q. What?

A. We were not invited to that meeting.

[fol. 118] Q. When was this now?

A. When were the pickets out, may I ask that?

Mr. Cox: September 16th.

A. (Continuing) This must have been on the 16th of September.

Q. He told you he was busy talking to Farwest at that time?

A. At that time. Subsequently, however, he did call me and indicated that he would be perfectly willing to sit down with the Yellow Cab group, which he did. Mr. Lancaster was present.

Q. Do you remember about what date that first meeting was?

A. That must have been, my guess is probably September 17th. It is very close to that.

Q. One or two days later?

A. One or two days later.

Q. And now, who attended this meeting with the Federal Conciliator?

The Court: Wait a minute. On September 17th did you meet with the Federal Conciliator?

The Witness: That's right.

The Court: All right.

A. (Continuing) Mr. Lancaster was present, representing the Union, and three of his group who I do not recall.

Q. Was Mr. Donaldson there at the first meeting?

A. Mr. Donaldson was not there.

Q. You say three others from Mr. Lancaster's group, from his Union?

A. That's correct.

Q. Now, who else was there with you, Mr. Slemmons?

A. Mr. Cox was with me.

[fol. 119] Q. Mr. Cox.

A. He attended the first meeting. Also present was the Negotiating Committee of the Yellow Cab Corporation, consisting of five owner-drivers. I can perhaps recall them. Mr. Hawkins, I recall was one.

Q. Mr. Fike?

A. Mr. Fike was there. Mr. LaBissoniere was there. Mr. Shavlan was there and Mr. Sedam, as I recall, and of course, the Federal Conciliator, Mr. McPherson.

Q. Now, at this first session that you had with the Federal Conciliator, were those people present that you mentioned? Were any of the grievances that arose under the prior contract brought forward?

A. Yes.

Q. Was the Union claiming that that matter should be settled as a part of the negotiation of this new contract?

A. I don't think it was at that first meeting, Mr. Bassett. I think it was at the subsequent meeting which was, maybe, two days after that. Let me give you a little background on that. At the time we met with the Conciliation Service, Gray Top had signed the standard form of contract which is in evidence here as Exhibit No. 39, I believe. Let's see if I am right in that.

Q. That's right, Exhibit 39.

A. Exhibit No. 39. It was anticipated that Far West would get together and determine whether it—

Q. Would do what?

A. The Farwest group would get together and determine whether it would sign the standard form of contract, which [fol. 120] is the same as Exhibit No. 39. I think most of our discussions concerning the grievances, so-called, took place the following day after which Farwest signed the contract, or at least indicated its willingness to do so, and Gray Top signed it. Yellow Cab was the only one that had not.

Q. The next session was also before the Federal Conciliator?

A. That is correct.

Q. What other issues were raised besides the matter of the grievances that arose under the old contract? Now, those grievances had to do with the pension.

A. That was one of several. Actually, on the second day when Farwest and Gray Top had both indicated their desire to sign the standard form of contract, which is in this case Exhibit No. 39, Mr. Lancaster advised the group that it was his desire to have the same form of contract signed by the Yellow Cab group. At this point there was a departure as to various other issues that were involved. Number one—this took a substantial portion of time—it was his wish that each of the 118 cab corporations, if the signed separately, would put up a $1500 performance bond, or in the alternative, that if there was a blanket signing by one agent, that agent would put up a $30,000 performance bond. That matter was resolved. Mr. Lancaster subsequently withdrew that.

Q. Did he ask for something in lieu of that?

A. I think, as I recall it, Mr. Bassett, nothing in lieu of the bond. Mr. Lancaster agreed, I think, finally, that the corporations might sign separately. That was my under- [fol. 121] standing. Now, there was additional grievances that were discussed, however, that took place under the prior contract. Number one was the pension fund; what disposition would be made with respect to it. By that, I mean the funds that are held in escrow by Mr. Wenck under some designation that I don't know. I advised Mr. Lancaster on that score, that if the contract was signed, those funds would have to be interpleaded into court, because I didn't know what to do with them. I was perfectly willing to discuss that with you and Mr. Donaldson. Then there was the problem concerned with day-to-day handling of grievances between the Union and the Yellow Cab Corporations. As I remember it, that problem was resolved by the understanding between the Union on one side and the cab corporations and the negotiating committee on the other, that Mr. Baiocchi would handle those problems.

Q. Who?

A. Mr. Baiocchi would handle those problems on behalf of the corporations.

Q. Would he be authorized to settle grievances on behalf of any and all of the 118 owners?

A. Well, there is a shading in there, Mr. Bassett. It was agreed, as I remember it, that Mr. Baiocchi would handle minor matters; that as far as the contract was concerned, as far as major problems were concerned, he must seek authorization from the cab corporations.

Q. Minor matters were not defined, I take it?

A. Minor matters were not defined, no. As I say, there was a shading. I think we reached a substantial under [fol. 122] standing on that score.

Q. Are you talking about the second meeting?

A. The second meeting.

Q. How many all told?

A. Just the two.

Q. Now, you mentioned this committee and you mentioned among those present was Sedam and Fike; is that right?

A. That's right.

Q. Now, both of those gentlemen, who are owners, are also on the Board of Directors of the Service Company, the plaintiff here?

A. That's right.

Q. Now, Mr. Wunner was there?

A. I am sorry. Mr. Wunner was at the first meeting. He was not at the second. Wait a minute. Pardon me. My recollection is poor. I think Mr. Wunner was at both meetings.

Q. And he came here from where, from San Francisco?

A. He came from San Francisco.

Q. One of the partners in the Yellow Cab Company?

A. That's right.

Q. Was any agreement reached before the conciliator on the new contract?

A. Let's put it this way: Mr. Lancaster submitted the standard form of contract, and as far as he was concerned that was it.

Q. When was Defendants' Exhibit 39 delivered?

A. That was delivered to me.

Q. To you or the company?

A. A copy was delivered to us at the first or second meet [fol. 123] ing. It might have been the first meeting.

Q. Didn't you have a copy of that before?

A. Never.

Q. You didn't. But, didn't the Service Company have a copy of it before.

A. Not to my knowledge.

Q. Maybe you are right, I don't know.

Well, Mr. Slemmons, did I understand you to say that there was no actual agreement reached before the conciliator?

A. Let me answer it in this fashion: As far as a new contract was concerned, Mr. Lancaster submitted the form, which you have as Exhibit No. 39, and said, "This is the agreement that we want." Now, does that answer your question?

Q. No. That doesn't answer my question. Do you mean to say he was waiving all these other matters?

A. No. As I testified to, there were other items that were incidental to it.

Q. He wanted a contract concerning the day-to-day grievances that arose; he wanted a separate—

A. Not a contract.

Q. What?

A. Not a contract.

Q. He wanted, certainly, something in writing?

A. Never to my knowledge.

Q. Well, was he demanding that the pension fund be paid over to the pension trustees?

A. That was a demand, yes.

Q. And that wasn't agreed to?

[fol. 124] A. I advised him, as I told you earlier, that that must be interpleaded into the Superior Court, as far as I was concerned.

Q. Was there also the matter of single shifting brought up?

A. That's right.

Q. Before the conciliator?

A. That's right.

Q. What did that have to do with?

A. Well, under the contract as it is written now—may I see it, if I may?

Q. Yes. (Handing to witness.)

Mr. Bassett: The witness has Exhibit No. 39.

Q. I will ask you if that matter came up?

A. It did.

Q. It did come up?

A. It did come up.

Q. I don't think we need to take any more time. That wasn't resolved either, was it, during those meetings?

A. Well, as far as the negotiating committee on the one side and Mr. Lancaster on the other, that is correct.

Q. No agreement?

A. Well, Mr. Lancaster said, "This is the agreement." The independent operators were—

Q. Against it?

A. Against it, that's right.

Mr. Bassett: I have no further questions.

[fol. 125] Cross examination.

By Mr. Cox:

Q. Handing you Defendants' Exhibit 37, which I believe you identified as a standard form of pledge, a dual pledge, one covering the stock of the individual Yellow Cab Company and the other the stock issued to that company in the Service Company—

A. Yes, sir.

Q. —you indicated this is a standard form which was used in connection with the sale of each of these cabs to the separate corporations?

A. Yes.

Q. This was simply a security device, the stock being pledged to secure, in addition to the conditional sales contract, the payment of the price agreed to in that contract?

A. That's right.

Q. It transferred no beneficial interest in the stock in either corporation to the Yellow Cab partners?

A. No.

Q. Handing you Defendants' Exhibit No. 40, the letter which Mr. Lancaster addressed to you under date of October 6, 1958, he indicates in that that signing would not

resolve the matter because from your participation in the negotiations, referring to these meetings with the conciliator, you knew there were other grievances involved. Did you at any time during those two meetings with the conciliator hear any statement by Mr. Lancaster as to grievances directed to the plaintiff corporation involving the [fol. 126] dispatcher employees?

A. Not to my knowledge.

Q. These grievances concerned claims by drivers as to vacation pay or overtime pay, things of that sort?

A. Under the old contract, that's right.

Q. Now, you testified that you had been present at these two meetings with the Federal conciliator. At that time whom were you representing?

A. Representing Yellow Cab Service.

Q. Had you prior to the liquidation of Yellow Cab partnership, in 1956, represented that partnership in labor negotiations with the defendant Union?

A. I have.

Q. Have you represented the operating companies employing driver members of the Union in labor negotiations since that liquidation in 1956?

A. I have not. Perhaps I should supplement this by saying that I have transmitted to the Union, as evidenced by Exhibit No. 38, the letter of October 3—it wasn't that far back.

Q. The one of October 26, 1956?

A. No. The one in 1956. Whatever that exhibit number is.

Mr. Little: It is October 26th.

The Witness: What is the exhibit number?

Mr. Cox: Plaintiff's Exhibit No. 26.

The Witness: I did transmit a contract with this letter of October 22, 1956, which is Plaintiff's Exhibit No. 26, to Mr. Bowen, since deceased, and Mr. Lancaster, covering the signatures of some 105 or 107 of the Yellow Cab com- [fol. 127] panies. I did so at the request of Mr. Wenck of Yellow Cab Service.

Q. Had you prior to that time participated at meetings in which negotiations leading to that contract were carried on representing any of the operating taxicab companies?

A. After liquidation?

Q. Yes.

A. I had not.

Q. In these meetings with the Federal conciliator to which you testified, the first one having been on September 17th, your testimony is that the 118 corporations were represented by a five-man committee which you named?

A. That's correct.

Q. Did they conduct the bulk of the discussion with Mr. Lancaster and the representatives of the Union as to the point on which they were still not in agreement, as far as this contract was concerned?

A. That is true. I might add also, that I don't think Mr. Wunner, who is the Yellow Cab partner, opened his mouth at either session. That is probably why I forgot.

Q. Is Mr. Wunner a director or officer of Yellow Cab Service Company?

A. Yes.

Q. Handing you Defendants' Exhibit No. 39, the standard form of contract which you testified you transmitted to Mr. Lancaster with the signature of Yellow Cab Service, and of 19 corporations, directing your attention to one of the attached pages for signatures, Cab No. 70, Shaw Yellow Cab, Inc., is that signed by Mr. Seadam who was a member [fol. 128] of the negotiating committee?

A. It is. Also No. 108 and 109, WBS Yellow Cab, Inc. and Sedam Yellow Cab, Inc. are also signed by Mr. Sedam.

Q. He owns three of the corporations?

A. I would assume from that that he does. I have forgotten.

Mr. Bassett: Is that correct, that he owns three of the corporations?

The Witness: He must.

By Mr. Cox:

Q. Mr. Bassett asked you as to whether or not Mr. Lancaster didn't want a contract on the handling of grievances. Again directing your attention to Defendants' Exhibit No. 39, and to Section 5 thereof, does not the standard form of contract which was presented by him at that time, and

which has since been signed by Yellow Cab Service, containing provisions for the handling of grievances which may arise under that contract?

A. It provides, and I read:

"All disputes and grievances or misunderstandings between the parties which arise during the life of this agreement shall be handled in the following manner:

"First, an attempt shall be made by the Union and the employer representatives to amiably resolve the matter.

"Secondly, in the event that the parties cannot resolve the matter, they shall choose a neutral third party to act as arbitrator and his decision in the matter shall be final [fol. 129] and binding on both parties."

Q. Mr. Bassett also asked you whether the issue of single shifting was discussed. I direct your attention again to Defendants' Exhibit No. 39, to Article 1, Section 5. Would you read that clause to the Court?

A. It is entitled, "Investors and Owners," and reads as follows:

"The employer (which includes investors and owners) agree to hire at least one non-investor member of the Union for a full shift each day such cab is operated."

Q. Is that the so-called single shift provision in the contract?

A. Yes.

Q. It is designed to require the employment of a member of the Union for each day in which the cabs operated on the shift opposite the owner-driver?

A. That's right.

Q. Does that contract provision have any bearing at all on the plaintiff, Yellow Cab Service Company?

A. None whatsoever.

Q. It was, therefore, not involved in any dispute over single shifting?

A. You mean Yellow Cab Service?

Q. Yellow Cab Service.

A. That's right.

The Court: As I understand it, the Yellow Cab Service, as such, were not involved in any one of these disputes?

The Witness: In connection with this contract, most of [fol. 130] the provisions related to the owner-drivers. That is, except for the dispatchers, which was the subject of this contract. Their salaries were set forth in something—

The Court: I understood there was no disagreement as to that?

The Witness: No disagreement.

The Court: These meetings on September 17th and 18th, there was no discussion as to any provision that related directly to the Yellow Cab Service Corporation, but that all of the negotiations were with reference to provisions relating to the owner corporation?

The Witness: That's right.

By Mr. Cox:

Q. Was there some discussion at the conciliation meeting about the pay scale for dispatchers?

A. It was simply stated—

Mr. Bassett: What?

A. (Continuing) It was simply stated by reading the contract.

Q. Did the negotiating committee, for example, for the corporations, indicate this was a marked increase for dispatchers which involve additional burden on them as they contribute to expenses?

A. They indicated so.

Q. Do you have any basis on which you could make a statement as to the number of these 118 separate corporations which are presently involved in a single shift operation?

[fol. 131] A. I have been told that there are somewhere between 20 and 30. I don't know that of my own knowledge.

Mr. Cox: That is all.

Redirect examination.

By Mr. Bassett:

Q. Now, the single shifting might affect the paying off on these conditional contracts of sale, might it not? I mean, it might affect the income from those particular cabs?

A. As I understand it, Mr. Bassett, the operators that do single shifting prefer to do so because they feel they can make more money. Does that answer your question?

Q. Yes, that answers it. They think if they hired someone else to operate a second shift it might not make as much money; if they had to pay this driver wages he wouldn't make as much as if he operated himself?

A. I assume that is part of the basis of their objection.

Q. And, of course, if they operated the cabs themselves without help, they could operate as many hours as they wanted?

A. That's correct.

Q. Mr. Siemmons, you are an officer of the Service Corporation, aren't you?

A. Yes, sir.

Q. And you were during all this time we are talking about?

A. Yes, sir.

Q. Are you secretary?

A. Yes, sir.

[fol. 132] Q. Do you serve without compensation?

A. Without compensation.

Mr. Bassett: Nothing further.

Recross examination.

By Mr. Cox:

Q. With respect to this matter of single shifting, is it your understanding that the majority feel that it is to their advantage to hire a driver and to run the cab two shifts during the day?

A. That's right.

Mr. Cox: That is all.

Mr. Bassett: That is all.

(Witness excused.)

The Court: We will recess at this time.

(Recess)

CHARLES E. BAIOCCHI, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Donaldson:

Q. State your name, please.
A. Charles E. Baiocchi.
Q. And your address?
A. 823 East 68th Street.
Q. And your position?
A. An employee of the Yellow Cab Service.
[fol. 133] Q. What is your title?
A. It has never been determined.
Q. Were you in the courtroom this morning when Mr. Wenck was testifying?
A. Part of the time, yes.
Q. He testified that you were the personnel manager; is that correct?
A. If he said so, that's right.
Q. You handed the Clerk a business card; is that right? May I see it?
A. That is an old holdover from the old company.
Q. You don't use these today?
A. Just strictly for identification.
Q. Do you carry some around with you?
A. For this kind of affair.
Q. This card says "Yellow Cab Company" on it, doesn't it?
A. (No response)
Q. Mr. Wenck also indicated in his testimony that you published these Yellow Cab Service, Inc. bulletins; is that correct?
A. I assist in it.
Q. Would you tell us how they are prepared and published?
A. You mean the mechanical features or editorial?
Q. Both.

A. Well, we have a young fellow who is a roustabout, somewhat like myself. He does part-time dispatching, part-time traffic work, part-time clerical work.

Q. And his name is?

A. Robert Booth.

Q. And he is employed by what concern?

[fol. 134] A. Yellow Cab Service. And during the week, why, we accumulate items from the owner-operators, from our concessionaires within the building, from the dispatch department, from the traffic department and from the accounting department, and then we put them into a form and we go over them and finally come out with a mimeographed sheet.

Q. You submit it for approval to Mr. Wenck's office?

A. No.

Q. Does he see them before you print them?

A. No.

Q. Are you saying he never sees them before you print them? Doesn't he, in fact, give you, occasionally give you items for inclusion in this bulletin?

A. He does.

Q. Who pays for the publication of this bulletin?

A. Who pays for it?

Q. Yes. Who pays for the paper and the mimeographing?

A. The Service Company.

Q. Where are the bulletins posted?

A. They are not.

Q. How are they distributed?

A. They are distributed with the checks on payday.

Q. With the checks on payday?

A. Yes.

Q. They are distributed to both owners and drivers?

A. Every one. Dispatchers and—

Q. You have been authorized, have you not, to hire and fire and discipline drivers?

A. Not directly.

[fol. 135] Q. Mr. Wenck testified that those were your responsibilities, are they?

A. They are authorities delegated to me at various times.

Q. To be specific about it, I am going to show you De-

fendants' Exhibit 22, which you apparently prepared, and ask you if that is one of the bulletins which you have?

A. I see there is some information here from the Gray Line Tours; responsibilities regarding accidents; and evidently some notations from the last owners' meeting.

Q. That is getting right to the point. Would you read for us what it says here, starting with "Rules and Regulations," and read the next sentence there?

A. It says, "Owners; 1."

Q. Read the sentence following that.

A. "Rules and regulations adopted at the last owners meeting are as follows:"

Q. Now, jumping down to where it says "Drivers"; read the fourth item that is listed there.

A. It says: "Drivers: 1. All drivers will be hired, fired and disciplined by the personnel manager."

Q. Who is the personnel manager?

A. What date was this?

Q. What date does it say?

A. November 27, 1957.

Q. Who was the personnel manager then?

A. Oh, I assume I was.

Q. Read the next sentence.

A. "Drivers will be assigned shifts, days off, emergency [fol. 136] leaves, vacations, etc. exclusively by the personnel manager."

Q. Who does that refer to?

A. The same party.

Q. To you, is that right?

A. I assume so, yes.

Q. Would you read the last two items?

A. "3. Drivers assigned regular shifts will be responsible for working their respective shifts and failure to work regularly assigned shifts will be justification for discharge.

"4. Drivers in uniform with a record for good production and a clear accident record will be given priority on all lists, both regular and extra."

Q. Have you carried out these responsibilities?

A. I think so.

Q. Have you, in fact, discharged drivers?

A. I have, at the direction of the operator.

The Court: Let him finish his answer.

A. (Continuing) I have, at the direction of the owners.

Q. What owners are you talking about?

A. Yellow Cab owners.

Q. As a group?

A. As an individual.

Q. I just don't understand that. Give us an example.

A. Mr. Donaldson, if you were an owner-operator of an individual Yellow Cab unit, and I were your driver, and I did something that didn't meet your idea of standardiza-
[fol. 137] tion or the standard that you desired, you would come to the personnel manager or that person delegated that authority and say, "I don't care for this man any more. I am of the opinion, and several of us are, that this man doesn't live up to the standards of the rest of the people, and I suggest he be discharged from the service."

Q. Who does the actual discharging?

A. Me.

Q. The owner or operator would not discharge the driver himself, but go to you and have you do it?

A. We would collaborate.

Q. Are you testifying that all operators have individual employees working for them?

A. Yes.

Q. Have specific individual employees working for them?

A. Yes.

Q. Now, have you disciplined drivers?

A. Yes.

Q. Have you assigned shifts?

A. Yes.

Q. Have you assigned days off?

A. Yes.

Q. Have you assigned emergency leaves or granted emergency leaves?

A. Yes.

Q. Have you assigned vacations or worked out vacation schedules?

A. Not schedules.

Q. Well, whatever you call them.

[fol. 138] A. Well—

Q. Have you arranged for the drivers to take vacations?

A. We collaborate with the individual owner, if it is satisfactory to him. Usually a man applies for a vacation or emergency leave or change of shift or days off after he has secured permission from his individual operator or owner.

Q. And you work that out?

A. I verify the fact and try to find him a replacement.

Q. Now, I am going to hand you Defendants' Exhibit 21 and refer you to the third paragraph which relates to an employee who was discharged for drinking on the job. Do you recall that incident?

A. No, I don't.

Q. Have you discharged drivers for drinking on the job?

A. Not during my tenure of service with the Yellow Cab Service, Inc.

Q. You don't know anything about this discharge?

A. If you give me the name of the party I could possibly recall.

Q. You wrote it, but apparently you didn't choose to insert his name.

A. I was directed not to.

Q. Who directed you not to?

A. The operators' committee.

Q. Told you not to mention his name?

A. (Witness nods head.)

Q. Now, what is the Drivers' Radio School?

A. It is a radio school—it is a little informal chat we have with new employees to familiarize them with the [fol. 139] operation, mechanical operation and procedure of the radio dispatch system. In other words, the things that they can do and the things they cannot do according to FCC regulations, and also our various code names, numbers and lingo in order to expedite the service.

Q. Now, are new drivers that you hire, are they required to attend this radio school?

A. No. We suggest that they do to become more efficient.

Q. You don't require them?

A. No.

Q. Now, I am going to show you a bulletin, which is one of the several which have been marked as Exhibit No. 23,

and refer you to what it says about radio school. Would you read that?

A. "Radio school is given each Saturday at 12:30 p. m. here in the office. All new drivers who have not attended are required to appear for one session."

Q. That says they are required to be there. You are saying they are not required to be there.

A. It has never been enforced.

Q. Is it a requirement?

A. Not necessarily.

Q. At this radio school, who conducts the school?

A. Any one of the dispatchers.

Q. Who are the dispatchers employed by?

A. Yellow Cab Service, Inc.

Q. Where is the school held?

A. In the office.

Q. Whose office?

[fol. 140] A. Any office in the building, wherever there is a vacant room.

Q. And whose premises are those?

A. What do you mean?

Q. Who owns those premises or who leases those premises where the school is held?

A. I am not familiar with that phase of it.

Mr. Bassett: I think that has been testified to, your Honor.

By Mr. Donaldson:

Q. Did you attend those schools?

A. No.

Q. Mr. Wenck testified concerning Defendants' Exhibit 30, which is the wage and hour policy which was posted at the building sometime in June, 1958, after the old contract had expired. Are you familiar with that document?

A. Yes, I have seen it.

Q. All right. A few days later, either before or after this was posted, did you send a copy of it to the Union?

A. I don't recall.

Q. To help you recall, here is a document marked for identification as Defendants' Exhibit 34. Does that help refresh your memory?

A. Did I sign it?

Q. Is that a copy of a letter which you sent to the Union on or about June 5th?

A. It appears to be such, but I can't say that I have ever seen this before.

Q. You can't say?

[fol. 141] A. No, I can't.

Q. Mr. Wenck told you to send a copy of this document, Defendants' Exhibit No. 30, to the Union?

A. No, I think the operators' committee told me to.

Q. The operators' committee told me to. You think you did?

A. I think I did. I can't identify that. If you have the original, I can identify my signature.

Q. I don't think we have the original. You can't recall whether this is the letter that you sent?

A. No.

Q. If I told you that this copy came out of Mr. Wenck's correspondence file, would that help you at all?

A. What do you mean?

Q. I mean this particular copy that I showed you was one which I obtained from Mr. Wenck's correspondence file, which he said came from your office.

A. I don't question it came out of his office. I have no way of determining whether it did or did not. I can't identify that piece of paper.

Q. You do think the owners or someone told you to send this copy of wage and hour policy to the Union?

A. Evidently it is—someone did.

(Colloquy.)

Mr. Slemmons: No objection.

Mr. Donaldson: We offer Exhibit 34, your Honor.

The Court: Very well. Exhibit 34 will be admitted.

[fol. 142] (Defendants' Exhibit 34 for identification was received in evidence.)

Mr. Donaldson: Would you mark this, please.

(Owners' statement was marked for identification as Defendants' Exhibit 41.)

By Mr. Donaldson:

Q. Showing you what has been marked now as Defendants' Exhibit 41 for identification, do you recognize that document, not that particular document, but do you recognize the form and so forth?

A. I recognize the form.

Q. What is that form?

A. It says, "Owners' statement."

Q. Would you tell us what it is and how it is used; what connection you have with it?

A. I have none.

Q. You have none with it?

A. No. This is strictly an accounting form. I have nothing to do with the accounting department.

Q. Are these the forms used by Yellow Cab Service, Inc. to furnish the owners with a statement of weekly income and deductions?

Mr. Slemmons: If you know.

Mr. Donaldson: If you know.

By Mr. Donaldson:

Q. You say you have seen them before?

A. I have seen them around. I have paid no particular attention to them. I have an idea that is what they are.

Q. You are not familiar with the deductions that are made and the manner in which they are made?

A. No.

[fol. 143] Mr. Donaldson: Now, your Honor, we are at the point where we need the additional records that are being brought in.

(Colloquy.)

By Mr. Donaldson:

Q. Mr. Baiocchi, isn't it true that drivers working at Yellow Cab, some of them at least, work or drive for more than one owner or more than one operator?

A. Oh, yeah.

Q. In fact, some drive for several?

A. That's right.

Q. And there is an interchange of employees in that respect?

A. That's right.

Q. They may work one day for one owner-operator and another day for another operator; is that right?

A. Right.

Q. And you—

Mr. Slemmons: You said "yes"?

The Witness: Yes.

Q. You assign those employees to the various owners?

A. Occasionally.

Q. Who can help us and testify as to these owner statements; that is, Defendants' Exhibit No. 41. Who do you think can help us?

A. I think the comptroller, Mr. Brandt.

Q. Mr. Baiocchi, who are traffic men? What does that term mean to you?

A. Well, it is a term we give to the people who use our automobile for the purpose of mobility between various [fol. 144] points of concessions.

Q. You said they are men—

A. That's right.

Q. They are employees?

A. That's right.

Q. Of what company?

A. Yellow Cab Service.

Q. And they use an automobile?

A. Yes.

Q. And that automobile is owned by what company?

A. Yellow Cab Service.

Q. And then what do they do?

A. They meet the trains; they act as starters.

Q. What does that mean?

A. Well, that means that, for instance, if a train was due in at eight o'clock in the morning, it is their duty to see there are sufficient cars and to keep the dispatcher alerted as to what the demand is; how many cabs there are; if the train is delayed; and to relay that information to the taxicabs so as not to waste time there, and then they also act as, oh, assistants. They have auxiliary tools

to assist changing tires, in case of a female driver. There are various things they do. They deliver some material such as telephone pads, and some of our printed advertising; they make an effort to be at the scene at any time a Yellow Cab is involved in an accident, to gather and assist and see that the proper information is gathered and that the proper information is gotten together and so the insurance company will have that information.

[fol. 145] Q. Is it fair to say that these men, traffic men, supervise the day-to-day operations of the cab company?

A. No.

Q. Well, let's put it this way: Suppose they go to the train depot and there aren't enough cabs present to service the arrival of a particular train; what do they do about it?

A. They call the dispatcher and alert him to that information.

Q. What happens then?

A. The dispatcher then broadcasts over the air that there are still people waiting at the station, and give me the numbers of those cabs that are servicing the people.

Q. Dispatch more cabs to the station; is that correct?

A. That's correct.

Q. What is the traffic superintendent?

A. That is the same.

Q. The same thing?

A. Yes.

Q. How about floor men?

A. Floor men?

Q. Yes.

A. Floor men now are employees of concessionaires who run the gasoline department.

Q. In other words, Yellow Cab Service has no employees that they call floor men?

A. Right.

Mr. Donaldson: That is all we have, your Honor, until the records get here.

[fol. 146] (Colloquy between Court and Counsel.)

By Mr. Donaldson:

Q. Mr. Baiocchi, will you come over here a minute, please. I find the personnel records, but I cannot find the payroll records.

A. I wasn't instructed to bring the payroll records. The personnel records is what I was instructed to bring.

Mr. Slemmons: That may be my fault.

Mr. Donaldson: Those are the ones we wanted, the ones that he produced in the other lawsuit last spring.

The Witness: I never did see the subpoena duces tecum.

(Colloquy.)

Mr. Donaldson: Would you mark this, please?

(Photostat copy of payroll record was marked for identification as Defendants' Exhibit 42.)

By Mr. Donaldson:

Q. Now, showing you what has been marked for identification as Defendants' Exhibit 42, would this document, which consists of four pages, fairly represent the type of payroll records which you maintained in your office?

A. It appears to be so.

Q. Pardon?

A. They appear as such.

Q. In this particular case this would be the payroll record of what employee? What is his name?

A. Earl Dalton.

Q. What is this number after Mr. Dalton's name?

A. That was a payroll number.

Q. A payroll number?

[fol. 147] A. Yes. In case two people have the same name.

Q. Now, on this payroll record for Mr. Earl Dalton, we have across the top an indication of what is the cab number. That would refer to what; that would be the column on the left-hand side?

A. Yeah.

Q. And that is the cab number to which he was assigned; is that correct?

A. Not necessarily. That is the cab that he drove on that particular date.

Q. The cab that he drove on the particular date?

A. Yes.

Q. And the next column is what?

A. The revenue.

Q. Which you people call the "turn"; is that right?

A. Right.

Q. And then we have the date?

A. Right.

Q. And then, what is the next column?

A. Hours.

Q. And the next?

A. Wages to date.

Q. And what are the remaining columns?

A. Bonus to date. Total earnings to date.

Mr. Slemmons: What is the purpose of this?

(Colloquy.)

Mr. Donaldson: I offer Exhibit 42.

Mr. Slemmons: May I see it, please?

(Handing to Counsel.)

Mr. Slemmons: No objection.

[fol. 148] The Court: Very well. Exhibit 42 will be admitted.

(Defendants' Exhibit No. 42 for identification was received in evidence.)

By Mr. Donaldson:

Q. Now, Mr. Dalton, according to these records has worked on a considerable number of cabs, has he not?

A. He has.

Q. To be specific, on January 1 he worked on Cab 39. On January 2nd he worked Cab 48. On January 3rd he worked on Cab 59, and so forth.

A. That's right.

Q. Who pays Mr. Dalton's vacation pay?

A. Each shift a certain amount of money is put into a fund for vacations. A certain amount of money is put

in the fund for Health and Welfare. A certain amount is put in for industrial insurance.

Q. A fund or pool is maintained?

A. Each fund—I assume, I am not the accountant. This is just strictly hearsay.

Mr. Slemmons: Then I move it be stricken.

The Witness: I would like to qualify the reason why he operates on different cabs each day.

The Court: You are being facetious in that motion I take it?

(No response.)

By Mr. Donaldson:

Q. Those funds or pools are maintained by the Service Company; is that correct?

A. That is part of their duties.

Mr. Donaldson: That is all.

[fol. 149] The Court: Say this man is a driver up there, who would be the person to assign him from one cab to another day by day; would you do that?

The Witness: This particular person is not of the best of health and couldn't work regularly. Therefore he would come in at his convenience, and if a cab was available, we would graciously assign him one. That would be myself or one of the traffic men who were on duty.

The Court: That is not a typical case of the average driver?

The Witness: No, it is not. He has some ailment with his lower limbs.

The Court: All right.

By Mr. Donaldson:

Q. Mr. Baiocchi, in a case of a typical driver, who assigns him to the cab when he comes in and reports to work in the morning?

A. If he has a regular cab he automatically—

Q. We are assuming he doesn't have a regular cab.

A. Whoever is on duty.

Q. You mean whoever is on duty for the Service Company?

A. That's right.

Q. You brought into court some personnel records, Mr. Baiocchi; is that right?

A. (Witness nods head.)

Q. By looking at these records, they consist of a card which has on it the employee's name and his address and his Social Security number and a photograph, and his employment record; is that correct?

A. (Witness nods head.)

[fol. 150] Q. Who maintains these cards?

A. Me.

Q. In your office?

A. Me.

Q. Now, you fill out a card for each employee as he is hired?

A. Yes.

Q. Or applies for work?

A. No. As he is hired.

Q. You keep these cards in your office?

A. (Witness nods head.)

Mr. Donaldson: Thank you. I think that is all.

Cross examination.

By Mr. Slemmons:

Q. Mr. Baiocchi, do you have occasion during the course of the day to travel around the city as a driver or any such thing? In other words, do you spend your time at the headquarters of the Yellow Cab Service?

A. I am in and out of the office.

Q. But normally you would spend most of your days, most of the day at the Yellow Cab Service operation, would you not?

A. Yes, sir.

Q. Referring to Exhibit 22 from which you testified, it states at the top that those rules and regulations were adopted at an owners' meeting. Were you present at that meeting, do you recall?

A. I don't recall.

[fol. 151] Q. Have there been several meetings such as that where the owners get together?

A. Regular monthly meetings.

Q. What happens at such a meeting as far as you are concerned?

A. The secretary or the chairman usually gives me a copy of the directives that are passed to be put into effect.

Q. Now, that would relate to the shifts and the leaves and vacations, would it, or would it relate to something other than that?

A. It could be, could be most anything. Rules governing the conduct of the individuals. It could be shifts such as that one particular meeting where they decided to curtail the shifts.

Q. In other words, you are a go-between the operators' committee and the operation itself?

A. I am subservient to them, yes.

Q. You testified, I believe, that each cab owner had an employee. There are some single shifts?

A. That's right.

Q. In those cases, would they have an employee?

A. Not regularly.

Q. Referring to Defendants' Exhibit No. 42, which is a wage accrual journal, which you testified was not a typical case, nevertheless, in each of those instances, who is chargeable with the unemployment compensation, Health and Welfare deductions and any other deductions that are taken?

A. Each cab.

Q. Each cab company?

[fol. 152] A. Each cab corporation.

Q. In other words, they are paid from that cab corporations' turn-in; is that correct?

A. Right.

Mr. Slemmons: That is all.

Redirect examination.

By Mr. Donaldson:

Q. Mr. Baiocchi, who issues the paycheck?

A. What is that?

Q. Who issues the paycheck to the drivers at the end of the week?

A. I think the Service Company.

Q. The Service Corporation is the payor on the paycheck; is that right?

A. That's right.

Q. Isn't it true that at some of these owners' meetings you state the complaints that you have to the owners as to the way the business is being run?

A. Will you qualify that a little further?

Q. Isn't it true at some of these owners' meetings they call upon you to give to them any complaint that you have as to the way the business is being run, as to the way the cabs are being operated and so forth?

A. I don't quite follow you.

Q. Do you ever speak at those owners' meetings?

A. I make suggestions.

Q. All right. What do you say? Give us an example of how you are called upon to speak, why you are called upon to speak?

[fol. 153] A. Well, for instance, I was called upon to give a report on what our progress was of securing some additional business out at Fort Lawton. I had a lengthy confab with the Commandant, and I reported upon that.

Q. And what else do you report on or discuss with the owners?

A. Oh, the general trend of business. Perhaps their accident reports.

Q. In connection with accidents, what would you say, for example?

A. I would say that, well, we will have to slow down and be more cautious, be more careful in the type of people that you are encouraging to drive here. Be careful yourselves. Work the peak hours and take midday hours off so we can take care of business in the proper fashion.

Q. Do you discuss the matter of wearing the uniform?

A. No. They have a uniform committee.

Q. You have never discussed that with the owners?

A. I have ridiculed them at times for some of their sloppy dress, yes.

Q. Have you done that at owners' meetings?

A. Yes.

Q. How about the appearance of their cab, such as the fact maybe they are driving around in cabs that aren't washed for several weeks?

A. The Benevolent Fund takes care of that.

Q. You haven't discussed such things as that?

A. I don't recall.

Q. All right. Now, how about reporting for work on [fol. 154] time; do you discuss that at the owners' meetings?

A. I think I told you about that.

Q. I am talking about the owners' meetings?

A. I think I told you that I told them, tried to tell them to be out of the peak hours; be off the street at the quiet hours.

Q. And how about radio procedure?

A. I never go into that.

Q. You don't discuss that?

A. (Witness nods head.)

Mr. Donaldson: I think that is all.

Recross examination.

By Mr. Slemmons:

Q. Do you have any control over the driving hours of the owners of these cabs? Do you advise them when they may drive during the course of a day?

A. No, I only suggest.

Q. You suggest, and otherwise it is strictly up to them?

A. Right.

Q. They can drive any time during the course of that day they wish?

A. That's right.

Mr. Slemmons: That is all.

The Court: Is that all?

Mr. Donaldson: I have something on that last point.

[fol. 155] Further direct examination.

By Mr. Donaldson:

Q. You testified, Mr. Baiocchi, that you have no control over or no interest in—

Mr. Slemmons: He didn't testify to that. He said he had no control over it. He didn't testify he had no interest in it.

Q. You have no control over the amount of time that the owners operate their cabs?

A. Correct.

Q. I am going to show you some Yellow Cab Service bulletins and ask you to read them to us. The first is Defendants' Exhibit No. 9. Would you read us the first paragraph? First of all, give us the date of the bulletin.

A. "Yellow Cab Service, Inc. Bulletin, June 25, 1958. New operating procedure. The weekly time allotment per cab has now been increased to thirteen shifts or 110 hours. Daily shift times will remain the same unless the office is notified that a change is to be made and all owners and drivers must abide strictly by their shift schedule. Single shifts are limited to twelve hours per shift. If there is any doubt as to working hours, come into the office and check your schedule."

Q. I am going to hand you Defendants' Exhibit No. 11 and ask you to read the fourth paragraph. Give us the date of the bulletin first.

A. June 11, 1958.

[fol. 156] "Operating Procedure. Owners and drivers must be off the street at the end of the shift. Contrary to rumor, it is not possible to remain on the street without using your radio after your shift is completed. Relief drivers who are working as a replacement driver must inform the dispatcher of the circumstances and time of shift in order to avoid being called off the street prior to the end of the shift."

Q. Would you like to change the testimony that you gave a moment ago? Do you still insist that Yellow Cab Service

has no control over the shifts or the hours of the day in which an owner can operate?

A. I don't make the policy of the Yellow Cab Service.

Q. I am asking you, do you want to change your testimony?

A. Would you read it back to me?

Mr. Donaldson: Mr. Reporter, would you read it?

The Court: Isn't this just an argument between him saying that he doesn't do it personally, but the plaintiff does it?

Mr. Donaldson: If he will admit the plaintiff does it.

The Court: I think that is what he got through saying, that Yellow Cab Service has no control over it.

The Witness: No.

The Court: Did I misunderstand you?

The Witness: You must have, sir.

[fol. 157] The Court: Would you explain?

The Witness: We can go back to the original testimony which was that these bulletins are made up from items that are accumulated during the week from the various departments, the traffic department, the dispatch department, the accounting department, operators' committee, and the various concessionaires within the building. That bulletin is strictly a medium of informing these people what these various other committees or departments were suggesting.

The Court: I take it then this means that a committee of the corporations or of the owners—

The Witness: That's right.

The Court: —dictates this, not you or not the plaintiff?

The Witness: That's right.

By Mr. Donaldson:

Q. So when it says, "Yellow Cab Service, Inc." on this bulletin, you are saying that isn't what it means; is that right?

A. Mr. Donaldson, I am not an attorney, so I couldn't be in a position to say whether it is or not.

Q. You are telling us now that this bulletin is put out solely at the request of a committee of owners?

A. That's right.

Q. And that Yellow Cab Service, Inc. has nothing to do with it?

Mr. Slemmons: That isn't quite the testimony. The testimony, I think, is clear in the record, your Honor. I think the only thing that is not clear is who directs these owner-[fol. 158] drivers in their scheduled hours of work on the streets. If that is the question—

By Mr. Donaldson:

Q. Let's be specific. Taking paragraph four on Defendants' Exhibit No. 11, how did that get into the bulletin? You published this bulletin; where did you get the information for that paragraph?

A. It must have come from the operating committee, because it says the "operating procedure."

Q. So you are saying you got it from the operating committee. Who is on the operating committee?

A. It changes from month to month.

Q. How does it change?

A. Among themselves.

Q. They elect their own operating committee each month?

A. Yes.

Q. Would you say the same thing with respect to Defendants' Exhibit No. 9, that you got that information from the operating committee?

A. If it is relative to operating procedure, yes.

Q. Who appoints the operating committee?

A. The men themselves.

Q. And do you know whether Mr. Wenck has anything to do with the appointment of the operating committee?

A. No, I don't.

Q. Showing you Defendants' Exhibit No. 10, would you read paragraph two?

A. "New Operating Committee. The new operating committee consists of Wally Peck who will serve until October 1, H. L. Hanson who will serve until November 1, and [fol. 159] Jim Cree who will serve until December 1. Each thirty days a new owner will be appointed by the president and during the last month of each man's tour of duty, he will act as chairman. This committee will meet each Thursday morning at 9:45 a. m."

Q. Does that mean that Mr. Wenck appoints the operating committee, the members on the operating committee?

A. I don't know.

Q. Did you write this?

A. I just wrote what I was given.

Q. Who gave it to you?

A. I don't recall.

Q. Mr. Wenck says he doesn't know where it comes from.

Mr. Slemmons: Mr. Wenck has testified he did not appoint the operative committee. I think we should call one of the operative committee and let him tell us.

The Court: It would be interesting.

Mr. Donaldson: That is all.

Mr. Slemmons: I have no further questions.

(Witness excused.)

Mr. Bassett: I will recall Mr. Wenck for a few questions. Maybe we can wind this up tonight.

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[fol. 160] August H. Wenck, having been first duly sworn, resumed the stand and testified as follows:

Direct examination.

By Mr. Bassett:

Q. Mr. Wenck, Defendants' Exhibit—

Mr. Bassett: Would you mark this, please.

(Owner's statement marked for identification as Defendants' Exhibit 43.)

Q. Mr. Wenck, Defendants' Exhibit 43 for identification is an owner's statement. It is issued weekly, and I believe is made up in the office of the Service Corporation; is that correct?

A. That's right.

Q. You have seen those?

A. Yeah.

Q. Now, down here at the bottom it says "Weekly Summary," does it not?

A. Uh huh.

Q. And the first column to the left, "Total turn, $93.60." That is the amount that the driver took in during the period?

A. This column here, this is your $93.60. Yes.

Q. Now, these items in red, like, "Total Wages"—

A. Well, apparently that is the $9.00 a day guarantee. This is the percentage involved. I think that is what it is.

Q. "Total gas"?

A. That is—

Q. That is in red?

A. Yes.

fol. 161] Q. Total repairs in red. Service charge in red.

A. Just use red ink for that.

Q. For those that are deducted from the turn-in?

A. Yeah.

Q. Is that correct?

A. Yeah. I think that is right.

Q. Down in the last column it says, "Net to owner"?

A. I think that's right.

Q. It says, "$55.65," in red?

A. Yeah.

Q. That is how much the owner lost that week?

A. Apparently he only worked four shifts that week.

Q. Is that the reason?

A. I think so, yes. He only booked $93.00.

Mr. Bassett: Would you mark this, please.

(Owner's statement was marked for identification as Defendants' Exhibit No. 44.)

The Witness: I have a general idea what this is, Mr. Bassett, but I am not the accountant.

Q. Is Cab No. 123 the Martin Yellow Cab, Inc.?

A. That's right.

Q. And Mr. Weise was—

A. —was the driver on that particular day, and this was the driver on that day (indicating) and so on down the line. Whether owners or what they are, I don't know.

Q. Hughes was his driver, wasn't he?

A. I don't know whether Hughes is an owner or driver. I don't know.

Q. Now, Defendants' Exhibit No. 44 is composed of three sheets, three weekly sheets, for the same cab, No. 123, [fol. 162] Martin Yellow Cab Company?

A. Uh huh.

Q. Now, I notice in these three—

A. All right; one, two, three, four, five, six shifts. These are the hours; four days he worked eight and a half hours. One day he worked seven hours. One day he worked one hour.

Q. What is this (indicating)?

A. That is the hours. That is eight and a half hours. That is one hour. So he worked a total of 49½ hours there. That is all the cab operated all week. He lost $47.14.

Q. Now, the next week, right under that.

A. All right. He took in $113.60. He worked one, two, three, four, five, six shifts. He reported three full shifts of eight and a half hours.

Q. He went in the hole that week?

A. He didn't turn it all in apparently. I don't know.

Q. Now, the next one. Was the same cab and the same company—

A. He worked five. I don't know who the driver was.

Q. Five days?

A. Uh huh. Four of them eight and a half hours; one at nine hours.

Q. And went in the hole that week for $48.41?

A. Apparently. Only took in $—

Mr. Bassett: We offer these two in evidence.

The Witness: That number 123, I think—that is Mr. Weise who lost his cab. He wasn't able to produce.

[fol. 163] Q. Is somebody else running it now?

A. That's right.

Mr. Little: If your Honor please, I would like, as long as they came from our files, I would like to interrogate Mr. Wenck after we recess for the day.

Mr. Donaldson: Excuse me. These did not come from your files.

The Court: I will give you a chance to examine them before I rule on their admissibility.

We will recess until tomorrow morning.

(Colloquy between Court and Counsel.)

[fol. 164] MORNING SESSION

October 9, 1958
9:30 A. M.

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The Court: Let's see, I think we were considering these exhibits, were we not?

Mr. Little: Yes, your Honor, and Mr. Wenck was on the stand.

AUGUST H. WENCK, resumes.

Direct examination (Continued).

By Mr. Bassett:

Q. Mr. Wenck, I was examining you concerning these so-called owners' statements.

A. Uh huh.

Q. And we looked at several of these weekly sheets and saw that the cab owner, Cab No. 123, went in the hole one week $55.65; another week $47.14; another week $32.96, and another week $48.41. Now, who carries that credit or indebtedness, or whatever you choose to call it; who puts the money out, the Service Company doesn't, or does the partnership do it?

A. No. If the man is in arrears he is carried for a reasonable period of time.

Q. Who gives him this credit?

A. Well, he just owes that money.

Q. To whom?

A. To the—for the service on his note, and he owes it on his contract.

[fol. 165] Q. He owes it to the Service Corporation, doesn't he?

A. Yes, until another arrangement is made, and he leaves, and then it is all taken care of again.

Q. And the Service Corporation carries this for all the owners when they fall behind, isn't that true?

A. The Service Company has no money.

Q. Well, who puts out this material? This is for material, isn't it; gas?

A. I think I can explain that this way: This individual—
Q. Not this one; all of them.

Mr. Little: Let him answer.
The Court: I think we better have a question.
Mr. Bassett: I think you have answered my question. Somebody furnishes the credit.

Q. Now, these sheets show that this Cab No. 123, the Martin Yellow Cab, Inc., fell behind.
A. Can I explain this?
Q. I simply want to know—
A. He owes it to the Service Company.
Q. That is all I wanted to know. Thank you.

The Court: What happens if he doesn't pay it back?
The Witness: Then he forfeits his conditional sales contract and we sell it to someone else. Then the deficit is brought up and the Service Company is reimbursed for it.

By Mr. Bassett:

Q. Who reimburses the Service Company?
A. The new purchaser.
Q. Has to assume that indebtedness; is that right?
[fol. 166] A. That's right.

Mr. Bassett: Would you mark this, please.

(Yellow Cab Service Instructors' Manual was marked for identification as Defendants' Exhibit No. 45.)

Mr. Bassett: I would like to offer in evidence now Exhibits 43 and 44.
Mr. Little: No objection.
The Court: Exhibits 43 and 44 will be admitted.

(Defendants' Exhibits 43 and 44 for identification were received in evidence.)

By Mr. Bassett:

Q. Showing you Defendants' Exhibit 45—and I will tell the Court this will be the last one as far as we are concerned—this is labeled at the tap, "Yellow Cab Service, Inc. Instructors' Manual. It is signed, "Yellow Cab Service,

Inc.," and dated April 1, 1957. Did the Service Company prepare that and issue it?

A. I think this was prepared and put together after the owners all had a meeting and decided this is what they wanted to put out to everyone to follow.

Q. They decide all these things?

A. That's right.

Q. The Service Company had nothing whatever to do with it?

A. The Service Company does the work, the typing and that sort of thing.

Q. Do you mean to say that these taxicab drivers—

A. Owners.

Q. Well, they bought the cabs recently, didn't they? This [fol. 167] was in 1957.

A. Was this after they bought it?

Q. Yes. I suppose so. April 1, 1957. Do you mean to say that these owners who were formerly taxicab drivers prepared a manual like that, or would you say the owners and operators of the Yellow Cab Company did that from their experience over—

A. Let's remember, these men have all been in this business a long time. They have been in this business a long time, many, many of them. They sit down and these are the rules or instructions or ideas that they have. They want to put these into effect, if they can. So they asked the Service Company to prepare that for them. The Service Company does the clerical work.

Q. Well, who made these rules?

A. The men themselves. They agreed to those rules.

Q. They dictated these things?

A. That's right.

Q. Why didn't they sign it? Why did the Service Company sign it?

A. I don't know. They had to put some signature on it. The Service Company is theirs.

Mr. Bassett: I offer 45 in evidence.

Mr. Little: No objection.

The Court: 45 will be admitted.

(Defendants' Exhibit 45 for identification was received in evidence.)

Q. Calling your attention to item seven here, which refers to keeping trip sheets and how to use the trip sheet—[fol. 168] A. Punch out. Print name and payroll number. Stand column. Trip started from column. Dismissals and no goods. Time of starting trip and time of dismissal. Quote, city ordinance on keeping proper trip sheet.

Q. Supposing these so-called owners decided they weren't going to keep any trip sheets, would the Service Company stand for that?

A. Well, I have from past experience advised them to keep a trip sheet to comply with the city ordinance and our laws and regulations governing the operation of the cab.

The Court: I wish you would answer further though. Suppose one of the companies decided it wasn't going to keep a trip sheet, what would happen?

The Witness: If it wasn't going to? He would be warned; told that he had to do it to comply with the law.

The Court: And to comply with the contract, too?

The Witness: That's right.

Mr. Bassett: I think that will be all.

Cross examination.

By Mr. Little:

Q. I have several more on these owner statements. I am not going to interrogate at any length on them.

Mr. Little: To save time, I would like to have these all marked as one exhibit.

(Owner's statements were marked for identification as Plaintiff's Exhibit 46.)

[fol. 169] Mr. Little: Will there be any objection to it? It is the same type of thing that you offered in evidence.

Mr. Bassett: Except—that is where someone, I suppose, didn't fall behind?

Mr. Little: That's right.

Mr. Bassett: I don't see any red ink on it.

By Mr. Little:

Q. Mr. Wenck, I will hand you Plaintiff's Exhibit No. 46, consisting of nine pages, and I will ask you to describe what those are and where you obtained them.

A. This is an owner's statement covering Cab 101, known as the D & Q Yellow Cab, Inc. I don't know who the owner is. It shows here—

Q. That is one of the—

A. The same as Mr. Bassett, only this is one that is filled out. In other words, this cab has worked all week. Those that Mr. Bassett showed before only show four or five or six shifts worked. This one will show probably, this has two, four, six, eight, ten, I think fourteen shifts on here.

Q. During what period of time?

A. During one week period.

Q. And a shift is what?

A. Eight and a half hours. It worked—let me count them again. Two, four, six,—there are thirteen shifts on this particular report.

Q. You are speaking of the first page of Exhibit 46?

A. Yes.

[fol. 170] Q. Now, what do the other pages, without going into detail—

A. Well, practically the same.

Q. Do they cover the same company or other companies?

A. Other companies. I think there are three different companies involved here. Here is a sheet for Cab No. 35, Smith Yellow Cab, Inc. This is for Cab 21, Theljo Yellow Cab, Inc.

Q. Now, can I ask you one more question: Which are the more typical examples of operations, the ones shown in Defendants' Exhibit No. 43 and 44 or the ones shown in Exhibit 46?

A. These are the typical. Those are the unusual.

Mr. Little: That is all.

Mr. Slemmons: By these, I can't understand which exhibit you are referring to.

By Mr. Little:

Q. By these, you mean Exhibit 46?

A. That gives you an idea of what these companies that are operating properly do.

Q. I said Exhibit 46. I meant Plaintiff's Exhibit No. 46. That is what you are referring to?

A. I don't understand.

Q. As being more typical?

A. This is, oh, yes, 46.

Mr. Little: That is all, if the Court please.

Mr. Bassett: No further questions.

(Witness excused.)

Mr. Bassett: I would like to call Mr. Lancaster for questions that bear exclusively on the matter of jurisdiction. [fol. 171] The Court: Very well.

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GEORGE LANCASTER, called as a witness on his own behalf, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Bassett:

Q. Would you state your name, please, Mr. Lancaster?

A. George Lancaster.

Q. And your address?

A. 16211 15th Avenue Northeast.

Q. You are one of the defendants in this case?

A. I am.

Q. And what office do you hold in the defendant Union?

A. I am the Secretary-Treasurer and Business Agent, Local 465.

Q. How long have you been an officer of some kind in this Union?

A. Since 1933.

Q. 1933?

A. Yes, sir.

Q. Mr. Lancaster, before that did you drive taxicab here in the City of Seattle?

A. Yes, sir.

Q. For how long?

A. I started in July of 1929.

Q. Were you on the Union's Collective Bargaining Committee prior to 1956?

A. Yes, sir.

Q. For how long?

A. Oh, since becoming Business Agent of the Local in [fol. 172] about 1943.

Q. Now, after the Yellow Cab Company secured permission from the City Council to sell and transfer its licenses and cabs to companies, former owners and others, when was the first collective bargaining agreement negotiated with this new setup, the Service Corporation, the plaintiff here, and these purchasers of the taxicabs and other equipment?

A. In the spring of 1956.

Q. And who was on the employers' bargaining committee?

A. Well, each of the—you mean Yellow Cab?

Q. Yes.

A. There was a committee selected, as I understood it, from the Service Corporation, and at that time there were 117 corporations.

Q. And how many were on this committee, about; do you remember?

A. Well, the first committee I met with, I believe there were about twenty-five or twenty-six.

Q. Are you able to identify anyone who was there as spokesman for the Service Corporation?

A. Well, I have a signature sheet that has all their signatures on it, but it is not dated.

Q. Are you referring to the first contract, Exhibit No. 1?

A. No. It is just one that I have in my pocket.

Q. I am talking about the bargaining group.

A. That's right. You are talking about 1956?

Q. Yes. Before this Exhibit No. 1 was executed. It is dated June 1, 1956.

A. That's correct. The first committee that I met repre- [fol. 173] senting the Yellow Cab Company, the complete operation was a committee of about twenty-five or twenty-six people.

Q. And who was there representing the Yellow—the old Yellow Cab Company, or the Service Company?

A. Mr. Wenck was there.

Q. How many meetings did you have?

A. We had a number of meetings trying to—

Q. Did Mr. Wenck meet with the Union Negotiating Committee along with these owners that you have mentioned? You said there were about twenty-five of them.

A. In some of these meetings, yes; not all of them.

Q. Now, there are five sheets of signatures attached to Exhibit No. 1, the contract of 1956. Who presented these to the signers, did you do it?

A. No, sir. It was agreed that Mr. Slemmons would take the contract and get the signatures.

Q. Was Mr. Slemmons representing this negotiating committee at that time?

A. I was informed that he was.

Q. Did you or anyone on behalf of the Union secure any of the signatures to that contract, Exhibit No. 1?

A. Yes, I did.

Q. How many did you secure?

A. Oh, I believe it was about five or six. I think the contract, when it was turned over to our office, lacked about seven signatures. I think that I contacted about five or six of those and they came to the office and signed it. The seventh one, the last one to sign, I took the contract [fol. 174] up to the Yellow Cab office, a meeting with a committee. The same committee that negotiated the contract, and they called that individual in off the street and told him to sign the contract.

Q. The committee did that?

A. Yes, sir.

Q. And that was done in response—or, showing you Plaintiff's Exhibit No. 26, do you remember receiving that letter?

A. Yes.

Q. That made some reference to the fact that some hadn't yet signed?

A. Yes.

Q. And were sending the contract on to you?

A. Yes.

Q. You say the last one was called in off the street?

A. That was a 1956 contract, yes.

Q. Well, that is what this refers to, this Exhibit No. 26.

A. Let me see it.

Q. Isn't that right?

A. Yes. Yes, this is the one that informs me that they have—some of the signatures are not on it.

Q. Mr. Lancaster, are you familiar with the matters that led to the lawsuit entitled Ayres and others against the defendant Union?

A. Yes, I am.

Q. What were—just briefly tell the Court what the dispute was about at that time and why the Union resorted to picketing.

A. I had numerous complaints from members working at [fol. 175] Yellow Cab that the contract was being violated.

Q. In what respect?

A. Well, in the respect that they were not receiving holiday pay that the contract called for; that they were not getting out on shift according to their seniority rights; that their pension premiums were not being paid, and numerous other complaints.

Q. Was an effort made to settle those grievances?

A. Oh, yes.

Q. Concerning those matters?

A. Yes.

Q. And with whom did you discuss those grievances?

A. Mainly with Baiocchi, who was at that time, or, I was informed at that time, was the man I was supposed to contact.

Q. Now, this contract, Exhibit No. 1, provided for pensions, didn't it?

A. Yes.

Q. Mr. Wenck testified yesterday that the money that was deducted to pay the premiums to support this pension plan are being held in escrow or are deposited in a bank. Have you ever attempted to have the Service Company pay that money into the trust fund?

A. Yes, I have.

Q. Before this contract expired?

A. Yes.

Q. And after the contract expired, where you began to attempt to negotiate a new one, was this still one of the things that you wanted settled in the new contract?

A. Yes.

[fol. 176] Q. What attempt was made to settle that?

A. We have had numerous meetings and communications regarding it, both with individuals such as Charlie Baiocchi, Mr. Wenck, Mr. Slemmons, and in committee meetings, luncheon meetings, many discussion regarding it.

Q. When did the first meeting—when were the first meetings had in an effort to negotiate a new contract this year?

A. May I refer to my notes?

Q. You keep notes? Do you keep a diary?

A. Yes, I do.

Q. That will help refresh your memory. You can look at it.

A. I don't have my diary with me, but I took some notes out of it so I would have the date. The first meeting regarding the new contract?

Q. Yes.

A. The letter was sent to the different companies on March 31. The first meeting after that was on April 1.

Q. Do you remember who attended that meeting on behalf of the employer group?

A. That first meeting, there were no results from the first meeting. It was with Sedam, *Barmgardner* and *Forestrom*.

Q. They were the only ones who attended?

A. They stated that Mr. Wenck was out of town and nothing could be done at that time. We had to wait until he returned.

Q. When did you meet again?

A. On April 10th. No, wait a minute. On April 10th [fol. 177] Wenck called to inform me that Sedam, Fike, Hawkins, LaBissoniere and Shavlan had been appointed as a committee to meet with the Union regarding past problems and negotiating a new contract.

Q. Did you meet with them?

A. Well, the next day I received a letter from Mr. Wenck verifying that telephone conversation, and on April 15th I met with that committee. On April 24th I met with that committee.

Q. Was anyone else present besides the five names that you mentioned?

A. There were—I didn't make notations of it, and I don't remember.

Q. Did Mr. Wenck, or anyone on behalf of the Service Corporation, meet together with this negotiating committee after that date?

A. After April 15th?

Q. Yes.

A. Yes.

Q. Tell us when that occurred.

A. On April 30th I again called for a meeting, and was informed that Wenck was again out of town and we could hold a meeting as soon as he came back. We did hold a meeting on May 2nd.

Q. Was he present?

A. That I don't know.

Q. Do you recall he was present at some meeting?

A. Oh, yes.

Q. Give me those dates and times, if you can, if you remember them. If he wasn't there, I would like to have you [fol. 178] testify who was there representing the Service Company and the Yellow Cab Company.

A. Well, I had been informed that Sedam and Fike were directors of the Service Corporation and were representing the Service Corporation as well as the 118 corporations.

Q. Anyone else besides them? Was Mr. Slemmons there on Mr. Baiocchi or Mr. Fink at any of these subsequent meetings?

A. Mr. Fink? Do you mean Mr. Wenck?

Q. Mr. Wenck.

A. On September 18th, September 17th, we met in the Conciliator's office, and at that time, Mr. Wunner, Mr. Slemmons, and Mr. Cox were present.

Q. What were you trying to settle before the Federal Conciliator; what were the things you hadn't agreed upon?

A. Settlement of our problems concerning a 1956 contract, and trying to arrive at an agreement on a 1958 contract.

Q. Well, can you specifically mention those things?

A. Well, on the 1956 contract there was still the matter of the pension premium payment on employees since January of 1957. A matter of holiday and what we call show-up pay, guaranteed pay for a period in failure to get out on the street. We agreed that it was acceptable to them that

we would only present specified claims, that is, those of our members who had a specific claim regarding holiday pay or any other pay they thought they might have coming. [fol. 179] We would present that case only. Then, of course, trying to negotiate a final agreement.

Q. Was there any change in the new agreement with respect to wages or hours?

A. Yes.

Q. Was there any change in the contributions into the Pension Trust Fund?

A. Yes.

Q. What was the new change?

A. Where the 1956 contract called for ten cents an hour for every hour for which compensation was paid, the new contract was a flat eighty cents per shift.

Q. When was the last time you met before the Conciliator with this group?

A. On the 18th of this month. Pardon me. This is October. The 18th of September.

Q. When that meeting was adjourned, did you understand that you were to meet again, or did you just break off?

A. No, I understood we would meet again.

Mr. Bassett: Cross examine.

Cross examination.

By Mr. Cox:

Q. Mr. Lancaster, I believe you stated that in regard to the 1956 contract, Defendants' Exhibit No. 1, which Mr. Bassett handed you, that the signatures were obtained by Mr. Slemmons and you were informed he represented the negotiating committee. Could you tell the Court who advised you that Mr. Slemmons represented the negotiating committee?

[fol. 180] A. I had met with Mr. Slemmons and Mr. Wunner and Mr. Wenck and others, and it was finally agreed—I was objecting to getting the signatures of 117 corporations. I was requesting that they sign a contract in the same manner that Farwest and Gray Top and others sign a contract.

Q. They didn't sign it in that way, did they?

A. Mr. Slemmons insisted we must have the names of each of the officers of the 117 corporations. I agreed to that provided it was on one contract. Mr. Slemmons agreed that the company would get the signatures.

Q. You heard Mr. Wenck testify, I believe yesterday, that the men came into the office and signed, or that some instances the contract may have been presented to them on the street and that they signed it?

A. I heard him, yes. I don't know how it was done.

Q. You don't know whether Mr. Slemmons obtained a single signature to this contract?

A. No, I don't.

Q. All you know is he forwarded the contract to you under cover of Plaintiff's Exhibit 26?

A. Yes.

Q. Advising you that they had not obtained some ten signatures and that it was his understanding that the Union would undertake the responsibility of getting those?

A. Yes, I received that letter.

Q. The Union did get all but one of those, and that was obtained by the committee?

A. That's right.

[fol. 181] Q. You testified that you were familiar with the matters leading up to the Ayres case earlier this year, and the Union had some complaint that the contract was being violated. Did you verify any of these complaints to determine whether they were substantiated by the actual facts?

A. I tried to. I asked to see the records, the payroll records and the shift records, to see if the man had actually complied with the contract in order to earn the holiday pay. They refused to show them to me.

Q. Did you come to them with a specific case and say that a named driver claims that he appeared for work on a specified day and that you want to see the records to see if that is true, or simply come in and say you wanted to examine the records in general to determine whether or not there had been violations of the contract?

A. In the beginning, as the members came in and made the complaint, I would call Mr. Baiocchi and give him the member's name and ask him if that was true.

Mr. Baiocchi admitted it was true on some of those occasions, but there was nothing done to rectify it.

Q. Can you remember any instance in which you reported a specific case to Mr. Baiocchi that the records showed it?

A. Yes. It was in regard to holiday pay. I gave the individuals' names. There was more than one involved. I can't at the moment think of the names. I asked him why they had not received their holiday pay and he said they were being penalized for something they had done back [fol. 182] around Christmastime. I told him I thought that he was misreading the contract, that the contract specified, how the man earned that holiday pay and he had qualified and he was entitled to it.

Q. This then was either a question of interpretation of the contract or the application of rules of the driver group with respect to these individuals?

A. I don't know why it wasn't paid, except Baiocchi told me the man was being penalized because he did something back around Christmastime. I believe he said he missed a day.

Q. You indicated the 1956 contract provided for the payment of pensions and that you had tried to get the Service Company to pay over these moneys that Mr. Wenck testified were in the bank account. Has the Service Company itself paid pension funds on its employee dispatchers?

A. Yes, I believe they have.

Q. You were present in court during the Ayres case, were you?

A. Yes.

Q. Did Mr. Bassett in the court at that time indicate that the picketing that was involved in that situation was not intended to force the payment of these funds because enforcement of that obligation would be up to the trustees of the Union Pension Fund rather than the Union?

A. I believe he said that that was not the main issue. That was one of the issues. But, not picketing to collect pension moneys.

[fol. 183] Q. In your testimony you recounted the course of bargaining with representatives of the operators and of Yellow Cab Service Company with respect to trying to

work out a contract for 1958. Is there any occasion other than the meeting before the Conciliator in which your notes show that someone other than Mr. Sedam and Mr. Fike were present representing Yellow Cab Service Company?

A. Not in the negotiations on this contract.

Q. Your negotiations on this contract were substantially with the committee of five, named in Mr. Wenck's telephone call and letter, with Mr. Wenck, sometimes sitting in according to your recollection?

A. That's right. Mr. Wenck sat in on some of the meetings, but not at all of them.

Q. Did Mr. Wenck at those meetings ever undertake to say that he would require the owners of the 118 corporations to sign or to agree to a particular provision in the contract?

A. Mr. Wenck didn't make very many statements in those meetings. Mostly it would be a question only.

Q. Now, you indicated that in this meeting with the conciliator on September 17th, that again the matter was taken up of certain of the grievances continuing over from the 1956 contract. Did you make the settlement of those grievances a condition to the signing of a new contract?

A. Yes.

Q. Now, with reference to the matter of pensions, did Mr. Slemmons advise you that this presented a legal prob-
[fol. 184] lem which, as far as he could determine, could be handled only by interpleading the fund into court to determine exactly who was entitled to it?

A. He did, and he said, I believe, that can be worked out between you and Mr. Baiocchi. All we asked is that you agree it will be paid into the proper fund.

Q. Then you said the Union agreed at that meeting with respect to other grievances, the holiday pay and the show-up pay and so on, that you would present specific cases to the owners. Did the committee indicate that as far as they were concerned on that basis, the basis of specific complaints, the records should be made available to you and verify and settle these pending grievances?

A. Yes, they did.

Q. You indicated also, of course, at that meeting there was discussion of the new proposed contract and you recited certain changes over the old contract in wages, hours, pen-

sion fund. Was one of the changes that in the new contract the pension payments are limited to drivers, whereas in the 1956 contract there was a provision, which at least the Union interprets as requiring payments by owners as well?

A. This present contract, this new contract defines employees, as used in the contract, as those employed at the craft who have no investment in any taxicab; so those are the only people for whom we are negotiating for.

Q. Those are the only people pension payments are required?

A. That's right.

Q. An owners' participation in the pension fund was to [fol. 185] be strictly optional with him?

A. There was a letter of agreement, which is attached to the contract, that was signed by the other companies in regard to a contract that the investors could sign optionally, if they so desired.

Q. Now, handing you Defendants' Exhibit No. 39, is that the mimeographed form of contract which you and the other negotiators for the Union presented to the negotiating committee representing the operators, and to Mr. Slemmons at the meeting with the Conciliator on September 17th; disregarding now the attached signature sheets?

A. This is the same agreement that we have signed with Farwest, Gray Top, Pioneer and others. Circumstances surrounding our problems with Yellow are different than they are with the other companies. I did tell them in conciliation that we would probably require other things than what this contract contained in the way of letters and agreements attached to this contract.

Q. That pertained solely to the matter of the posting of a bond in the amount of $1500, I believe, if the contract was signed individually on behalf of each of the signers, or $30,000 if it was signed jointly for the entire fleet?

A. That was in the matter of negotiations. It was brought up and discussed, yes.

Q. Did you agree that would not be necessary and that you would permit signatures of the contract by the separate corporations as in 1956 without the posting of such a bond? [fol. 186] A. No, sir. That was not the agreement. We agreed that the bond would not be required if they would

sign and enforce a contract in the same manner as Farwest and Gray Top.

Mr. Bassett: What was that?

The Court: I suppose that is paying the pension money into the Union?

The Witness: We have to have some assurance that the contract, this time, would be lived up to. Wasn't able to enforce it previously and we would have to have something that would be concrete that we could use. That is why we talked about a bond, so that if someone violated, one of these corporations violated the contract, there would be some means of getting the moneys due our members.

By Mr. Cox:

Q. Isn't there a provision in this contract, Article 3, Section 5, which relates to the handling of disputes?

A. Yes. There was in the 1956 contract also.

Q. Did you propose in the course of any of the meetings before the Conciliator any other procedure to be applied to Yellow Cab or any other language to be inserted in a contract with Yellow Cab to handle that matter?

A. As I said, that same—practically the same clause was in the 1956 agreement, and we did ask for arbitration of our disputes under the 1956 contract. The company refused arbitration, and that is why we had that strike.

Q. This provision is changed to—

[fol. 187] Mr. Bassett: Let him finish, Mr. Cox.

A. (Continuing) All I want, if we run into the same problems as we ran into under the 1956 contract, with each of these individual corporations claiming that they are an individual concern, that we could have some method of getting the just moneys that were due our members that were employed on that fleet operation. Seemingly, the arbitration clause isn't helpful if the other side won't arbitrate.

Q. Hasn't the clause been changed over the language contained in the 1956 contract to provide for mandatory arbitration?

A. We tried to clarify it so it would be a little clearer.

Q. As a matter of fact, doesn't the provision now provide that an attempt shall be made by the Union and

employer representatives to amiably resolve the matter and, secondly, in the event that the parties cannot resolve the matter they shall choose a neutral third party to act as arbitrator and his decision in the matter shall be final and binding on both parties?

A. That's right. That is in the contract that we had signed with the other companies.

Q. Is it your testimony in the session before the conciliator you made some specific proposed demands which would have to be inserted in the contract with Yellow Cab different from and going beyond those in the contract already signed with Farwest and Gray Top?

A. Yes. I asked that we have letters of agreement to be attached to this contract that would give us a little further assurance than the contract itself gave.

[fol. 188] Q. These letters of agreement are something different from the bond we were talking about?

A. That was in lieu of.

Q. In lieu of the bond?

A. Yes.

Q. Did you suggest a form for these letters of agreement or intent?

A. No. We didn't get into the details of it. I thought at the time that Mr. Slemmons was present and doing the negotiating on that particular meeting—that was on the 18th when we wound up. The committee sat at the other end of the table and didn't say anything that day. I thought Mr. Slemmons and I had come to a fair understanding of what would be required. And thinking that we would have further meetings, I thought we could iron out—

Q. Did any of these matters going beyond or outside the terms of the contract that you had signed with the other cab operators specifically involve relations between the Union and Yellow Cab Service, as far as its dispatcher employees were concerned?

A. We were still in dispute with Yellow Cab Service regarding wages for dispatchers when our meeting broke up on the 18th. We had not arrived at an agreement for dispatcher wages at that time.

Q. Did you at that time ask any more in the way of dispatcher wages than is set out in Article 7 of the contract that you presented at the time and which had been signed by Farwest and Gray Top?

A. We did not. They refused to go to the $20 scale.

[fol. 189] Q. Since that time, however, Defendants' Exhibit 39 was mailed to you with the signature of Yellow Cab Service, agreeing to the contract with that provision in it?

Mr. Bassett: What date was that?

Mr. Cox: That was mailed on October 3.

Mr. Bassett: After this lawsuit was commenced?

By Mr. Cox:

Q. You did receive a contract with the signature of the plaintiff on it?

A. The first time that I heard that the Service Corporation as such was willing to sign a separate contract for the Service Company only, which is a new procedure, never had been done before,—in signing these contracts a Service Corporation and the committee representing the investors or owners met with us jointly and we exchanged contracts at the time. They are both the same contracts. The signatures from both of the companies is merely so that they are all informed as to just what the contract is, and they have all signed it. Now, the first that I knew that the Service Corporation was willing and anxious to sign a contract for the Service Corporation is when the papers were served on me stating we were going to be in court because they were offering to sign the contract. Seemingly, the Union refused to.

Mr. Bassett: Would you restate that?

The Witness: The first that I knew that the Service Corporation, representing Yellow Cab, was willing to sign a separate contract applying to that Service Corporation only, was when I was served with papers notifying me [fol. 190] that we had to be in court. The case was in court because, seemingly, we refused to sign such a contract.

By Mr. Cox:

Q. The complaint that was served on you at that time indicated primarily, however, that the Service Company felt that it had a continuing contract with you because the 1956 contract had not been terminated by either party?

A. I didn't realize that, because it was my thought that they had terminated. I had been so informed, as far as I was concerned, they terminated it with a letter.

Q. That was your interpretation of the letter which was sent to you with the attached signatures of some 110?

A. They said the undersigned, and Mr. Wenck was undersigned.

Q. He signed the covering letter with the attached signatures?

A. And the covering letter said "undersigned." I took it for granted he was one of the undersigned.

Q. Did the Yellow Cab Service Company, after it mailed you that letter, which you interpret as a termination, continue to perform under the terms of the 1956 contract as far as payment of pension, Health and Welfare and other funds with respect to its dispatcher employees, even beyond the June 1 date, which would have been the expiration of the 1956 contract if terminated?

A. Those premium payments are not received in our office. They are sent directly to the administrator's office.

Q. Do you know whether they have been made?

[fol. 191] A. And we receive copies from time to time of those that are delinquent or mailing in their premiums. I understand that the Service Corporation has been paying their premiums, but I have no personal knowledge of it. It doesn't come through our office.

Q. Is it my understanding of your testimony that as far as the Service Company is concerned, the only matter which you understood to be open after the sessions with the conciliator was the matter of wages for dispatchers?

A. The only dispute we had with the Service Company was a matter of wages for dispatchers and the manner in which the Service Company would fit into the endorsement and administration of a new contract.

Q. You took the position that the Service Company had

to take on a role enforcing the contract on behalf of the Union as against the individual employer corporations?

A. That they are a part of the enterprise. The same as the Farwest or the Gray Top. The Gray Top perhaps is a better example, because all of those cabs are operated as corporative cabs, and the individuals are buying the corporations. It is identical with Yellow in that respect. The Service Corporation and the Owners' Association hire an agent to represent them jointly. I deal through that agent if we have any complaint regarding any one of the individual corporations or something pertaining to the dispatchers who are employees of the Service Corporation. I take it up with that agent and it is usually ironed out right there with no further difficulty. [fol. 192] That is a procedure that I asked to be followed by the Yellow Cab Enterprise.

Q. And you presented that demand to the negotiating committee of the five members?

A. Time after time.

Q. I believe you stated that when you left the second meeting with the Conciliator on September 18th that you understood that you were to meet again. From whom did you have this understanding?

A. With the Conciliator himself. The committee did not inform me we were breaking off meetings.

Q. They did not affirmatively tell you this was the last meeting?

A. No.

Q. Did they, on the other hand, indicate they planned to meet with you again?

A. Yes. The committee and Mr. Slemmons and the Conciliator asked if we would remove our picket line if the committee would call a meeting of their group and recommend acceptance of these proposals that we had made in this Conciliation meeting. I told them that I didn't have the authority to do that, that I would have to be instructed by the membership. I agreed that I would call a special meeting of the membership and present the problem to the membership, and if they voted to remove the picket line for that purpose we could do so. I called the meeting on Monday. It takes at least two days to

inform our people of a special meeting. We should have more time. But, we hurried it up and did hold a special meeting on Monday, the 22nd, and at that meeting the [fol. 193] membership voted not to remove the picket line for any reason until we had reached an agreement. I so informed—I understood everything was standing by or holding up until we held this special meeting. I informed the Conciliator immediately after the meeting of the action of the meeting, and he said, "All right, I will try to set up a meeting as quickly as possible. Is tomorrow all right?" I said, "Yes, I am holding all my time open." He informed me the next day that he was unable to set up a meeting, and I believe shortly after that these papers were served on me, and of course—

Q. Did you advise Mr. Slemmons that your membership had refused to lift the picket line?

A. I believe I did.

Q. That was before this lawsuit was instituted?

A. Yes, I believe so.

Q. The reason for the request that you lift the picket was to enable the Yellow Cab Committee to call a meeting of their operators, which they are unable to do without drivers to have the cabs on the street while they are meeting; is that correct?

A. I guess as long as they are going through our picket line. Probably they don't want to attend the meeting. That is their business, not mine.

Q. Weren't you advised the purpose for their request was that you would lift the picket and permit their drivers to come back to work?

Mr. Bassett: I think this has gone far enough. I object to that as irrelevant and immaterial, about conditions un- [fol. 194] der which we would remove the picket. We are way beyond jurisdiction. We are talking now whether there is a labor dispute, and I think that is all the Court is concerned with.

The Court: It may be. However, we have gone into this matter to such an extent, I think I will permit this question.

Mr. Cox: It is my last question, I believe. I will rephrase it.

By Mr. Cox:

Q. Weren't you advised by the negotiating committee that they wished you to lift the pickets so that their drivers could come back to work; so that the cabs could be on the street, permitting them to call a meeting of the operators who were driving the cabs during the strike, for the presentation of the matters coming out of their sessions with you and your negotiators?

A. The way it was put was, it was in the form of a question: "Will you remove the pickets if this committee will commit itself to call a meeting of the entire group of Yellow Cab Enterprises and recommend acceptance of these proposals that you have made?" That is the way it was put.

Q. And your answer was, after calling a meeting, that you could not do so?

A. I told them I could not do so without calling a meeting of the membership.

Mr. Cox: That is all.

[fol. 195] Redirect examination.

By Mr. Bassett:

Q. At these meetings before the Conciliator did Mr. Sedam and Mr. Fike state what authority they had to speak—strike that, please.

Did Mr. Sedam and Mr. Fike ever tell you what authority they had to speak on behalf of the Service Corporation, the plaintiff here?

A. Yes. They did prior to and in the Conciliator's office.

Q. Did they tell you whether they had authority to speak with respect to the dispatchers that were employed by the Service Corporation?

A. Yes, both prior to and in the Conciliation meetings.

Q. I think you said Mr. Slemmons attended two meetings in conciliation?

A. That's correct.

Q. Did Mr. Slemmons confine himself to speaking concerning the dispatchers employed by the Service Corpora-

tion, or did he discuss and talk about problems that were peculiar to the owners, the operators?

A. He talked very little about dispatchers. In fact, I don't remember Mr. Slemmons getting into the matter of dispatchers. That came up the first day, the 17th. On the 17th the committee representing Yellow Cab, the committee of five, did most of the talking. Mr. Fike and Mr. Sedam said they were authorized to represent the dispatchers and that although the corporation meeting that they held set the limit of the wages at $17.80, they were willing to go to $18.70.

Q. I think you stated that they said they did speak on [fol. 196] behalf of the dispatchers. I am trying to find out what Mr. Slemmons did and said at these meetings in conciliation; was he speaking for the owner-operators or was he speaking about the problems that related to the Service Company?

A. The first day, the 17th, Mr. Slemmons only asked questions, as I remember. He didn't take very much of an active part. The second day Mr. Slemmons did all of the negotiating. I didn't even direct a remark to anyone on the other part of the committee. All the negotiations that day carried on there, Mr. Slemmons and Mr. Wunner asked a few questions.

Q. Was Mr. Wunner there, too?

A. Yes. I don't remember the dispatcher matter coming up on the 18th. We discussed the general problems of the contract as it pertained to the 118 corporations, and how the Service Company was tied into it.

Mr. Bassett: No further questions.

Recross examination.

By Mr. Cox:

Q. I believe you stated Mr. Fike and Mr. Sedam at all times indicated that they had authority to speak for the Service Corporation. Did they advise you that this was by virtue of the fact that they were directors of the corporation?

A. They informed me they were directors, yes.

Q. As I understand your testimony with respect to the meetings before the conciliator, you say that on the first day, September 17th, Mr. Slemmons largely asked questions [fol. 197] relating to the Union's position with respect to the provisions in the contract; is that right?

A. That's correct.

Q. Now, you say that on the second day he did all the negotiating, that is, in other words, was he making proposals on the second day or was he still exploring the nature of the differences between the two?

A. It was a general negotiating committee. We were in dispute, as I remember, on about seven different points. We discussed them at length as a group and then we were separated by the Conciliator. It was a normal conciliation meeting. Mr. Slemmons carried on as the spokesman.

Q. Then the five members of the Negotiating committee were present?

A. Yes.

Q. Did Mr. Slemmons indicate that he had authority to bind the committee to any terms that might be agreed to?

A. I remember once or twice some of the committee members started to get involved, and that one time Mr. Slemmons turned to Mr. Fike and shushed him. So, I would say that Mr. Slemmons was speaking for the committee.

Q. That was your impression?

A. Yes, it was.

Mr. Cox: That is all.

The Court: Gentlemen, I think we will all agree that we have gone as far as we ought to on this phase of the case.

[fol. 198] Mr. Bassett: I have no more questions or witnesses on this particular thing.

The Court: All right. You may step down.

(Witness excused.)

Mr. Bassett: Do you have anything further?

Mr. Cox: Yes. I will call Mr. Hawkins.

WILLIAM J. HAWKINS, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Cox:

Q. Will you state your name, please?
A. William J. Hawkins.
Q. Where do you live?
A. 731 Ravenna Boulevard.
Q. What is your occupation?
A. Owner-operator of Yellow Cab, Hawkins' Yellow Cab Company.
Q. Hawkins' Yellow Cab Company?
A. Hawkins' Yellow Cab Company, Inc.
Q. When did you buy the taxicab which you operate under the name of Hawkins' Yellow Cab Company, Inc.?
A. February 5, 1956, I think it was.
Q. Handing you Defendants' Exhibit No. 2 entitled "Conditional Sales Contract" and Defendants' Exhibit No. 3 entitled "Agreement" did you execute at that time forms of agreement similar to those?
A. Yes, I believe so. I haven't looked at this. Yes, sir.
[fol. 199] Q. Have you since February, 1956, been making regular payments on your conditional sales contract as provided in that contract?
A. I have.
Q. Do you have any idea what the approximate total of those payments would be?
A. No, but it would be around, roughly speaking, $2500, $3,000.
Q. Did you make a down payment on the cab?
A. I did.
Q. How much, approximately?
A. $400, $350, $400, somewhere in there.
Q. Do you have any ownership interest in any of the other 117 Yellow Cab Corporations?
A. None whatsoever.
Q. Does the owner of any of these other cab corporations have any ownership interest in your corporation?

A. No one has an ownership interest.

Q. Does Mr. Wenck or any of his partners in the former Yellow Cab Company have any ownership interest in your corporation?

A. No, none whatsoever.

Q. Does the Yellow Cab Service Company own any ownership interest in your corporation?

A. No, sir.

Q. Does your corporation own stock in Yellow Cab Service?

A. Yes.

Q. Is that four shares?

A. The same as the rest.

Q. What functions does Yellow Cab Service perform in [fol. 200] connection with your operations of your taxicab?

A. Well, they do the dispatching; they do my bookkeeping; maintain the building there for us, for me, and things of that nature.

Q. And each week out of the proceeds of your cab operation deductions are made for your payment on your conditional sales contract and for your share of the cost of operating the Service Company?

A. That's right.

Q. And they also deduct the wages to be paid to your employed driver and make that payment for you to him?

A. That's right.

Q. Are there certain rules or standards which all operators of Yellow Cabs are supposed to observe?

A. Yes.

Q. How are those rules determined or fixed?

A. Well, there is an operators' committee that any owner is entitled to give suggestions to. These suggestions are by the operators' committee, they are brought in front of a full committee of the owners, and if the suggestion is good, and the owner wants it, they vote it in. If the owners don't want it, they vote it out.

Q. How is this committee of operators selected?

A. Voted in, nominated and voted on at the owners' meeting.

Q. By the owners?

A. By the owners.

Q. Have you ever been a member of this operators' committee?

A. I was.

Q. Do you remember what period you served?

[fol. 201] A. No. It was in 1956. I couldn't tell you exactly.

Q. Does the membership of that committee change every month?

A. No. It has been staggered. Originally it was staggered. There is one, there is a certain number, and one is elected each month and one drops off.

Q. Does this committee receive complaints as to drivers and fix discipline for them if it is found there has been an infraction?

A. Right.

Mr. Bassett: I suggest you not lead the witness. He doesn't need it. He sat here all through the trial.

The Court: Well, the question was leading.

By Mr. Cox:

Q. Would you describe the procedure as far as complaints with respect to drivers and the functions of the operators' committee?

A. Well, the operators' committee, if there are complaints, they meet usually on Saturday, and any complaints are brought up in front of them. That is, the complaining person and the offender is brought in and the committee sits and decides whether it was an actual violation or an honest mistake that he possibly made. Then the committee as a whole agrees on whether there is punishment or not and mete it out.

The Court: May I go back a minute: You say that the members are elected?

The Witness: Yes, sir.

The Court: By all the cab drivers? What is the method of election?

[fol. 202] The Witness: All the owners—I should say—

The Court: Pass a ballot among them?

The Witness: When it is open for nominations, they nominate two or three for a position, for an opening on the

Board, the Operators' Board, and whoever is nominated is asked to leave the room and the rest of them vote.

The Court: This is at the owners' meeting?

The Witness: At the owners' meeting, yes, sir.

The Court: Mr. Wenck doesn't designate anyone?

The Witness: I might in all fairness say this: When this company originally started there was three on the operators' committee that Mr. Wenck designated temporarily until we could hold an owners' meeting and decide for ourselves. That is the only time anyone has been appointed by Mr. Wenck.

The Court: Thank you.

The Witness: He did that because we had not been organized in an owners' group at that time, but that was the only time that he has ever appointed anyone in that respect.

By Mr. Cox:

Q. Were you in court on Tuesday of this week?

A. Yes.

Q. Handing you Defendants', Exhibit 14, which is entitled, Yellow Cab Service, Inc. Bulletin," dated May 21, 1958, I will direct your attention to the first paragraph on [fol. 203] "Change of Operating Procedure," which related to the elimination of some shift or a reduction in the number of cabs operating. Did you hear Mr. Wenck's testimony on Tuesday regarding that item?

A. I did.

Q. Are you familiar with the manner in which the change in procedure involved in that was worked out?

A. Yes, sir.

Q. Tell the Court how it came about?

A. The early part of this summer, the economics of the cab industry were considerably down to what they normally are in the summer. For that reason our turn was down. The owners themselves—or first, I should say, the operators' committee got together and tried to figure out some way to bring our turn up.

Mr. Little: Explain "turn."

The Witness: Turn is our daily amount of money that the individual cab takes in.

A. (Continuing) The operators' committee formulated this deal where if we could take some cabs off the street—the pie is so big; if you cut it into 120 pieces it is very small. If you only cut 100 pieces, each piece is bigger. So we called a special meeting of all owners, and it was held in the Sorrento Hotel. This was presented to the owners at that time: Would they be willing to agree to limit the shifts and to take some cabs off the streets. There was quite an argument pro and con and so forth. We were up there about four hours almost. Finally they agreed to try it for a four week period. At that time this directive was given [fol. 204] to Bob Booth, I believe, to put in, so that the—not only the owners but the drivers and everyone would know what we were doing or trying to do.

Q. How long did that policy continue?

A. Four weeks only.

Q. Did Mr. Wenck or Mr. Baiocchi do anything to compel the adoption?

A. No, sir. They were not at the meeting. It was voted by the owners only. I am wrong. Mr. Baiocchi might have been there, but I am positive Mr. Wenck was not there.

Q. Did Yellow Cabs at one time have a one dollar surchatge on the fare to and from the Seattle Airport?

A. They did.

Q. Has it been removed?

A. Yes.

Q. Tell us how that was done?

A. Well, before we had this meter raise, the Yellow Cab Service—not the Service, but the individuals, and it was a carry-over from when it was the Yellow Cab Company, they had a surcharge on all fares to and from the airport. Actually, we were the only company in town—the other companies used to advertise that they will be straight meter. When the 118 corporations were formed, or when the 118 bought the cabs, they wanted this dollar surcharge removed. At a meeting, one of our regular owners' meetings, it was discussed removing it. Mr. Wenck got up and said that we were crazy if we did; it brought in so much more revenue in a year's time. He heartily recommended that we not take [fol. 205] the surcharge off. Afterwards a vote was taken on it and the majority of the owners wanted it taken off, so

Mr. Wenck says, "Well, that is your business, you voted on it; take it off" and it was removed at that time.

Q. Did you employ a driver to drive your cab one shift before the present strike?

A. Yes, I always have.

Q. What was his name?

A. Sam Poland.

Q. Is he a member of the defendant Local?

A. Yes, I believe, so far as I know.

Q. Has he refused to cross the picket line and drive your cab since the picketing started on September 16th?

A. Yes, he has.

Q. Did you have a part in negotiating the labor contract of June 1, 1956?

A. I was on the committee, the first committee that was formed for that; yes, sir.

Q. You met with Mr. Lancaster in the meetings he testified to?

A. The majority of them. I could have missed some, but I don't think so. I think I was there the majority of the time.

Q. Did Mr. Wenck attend some of these meetings?

A. Yes.

Q. Did he do all the negotiating for you and the other 117 corporations?

A. No. I think everybody did some talking and negotiating.

Q. Did you sign that contract for your corporation?

A. Yes.

[fol. 206] Q. Was that a separate action for your corporation or was it in any way binding on other corporations because of your position on the negotiating committee?

A. No, sir. It was for my own corporation only, one cab.

Q. Have you had any part in attempting to negotiate a contract with the Taxicab Drivers' Union since June 1st of this year?

A. I have.

Q. I believe you have heard testimony as to the other members of the committee?

A. Yes.

Q. Were you chairman of the committee?

A. I was chairman of the committee.

Q. Did Mr. Wenck at any time give you instructions as to how these negotiations were to be conducted or as to the terms that you must insist on in the contract?

A. None whatsoever.

Q. Did you have any directions or any opinions expressed from other operators as to matters to be taken up with the Union?

A. Yes. We had a number of those. I mean, at our meetings. They went over the contract, the form that was submitted by the Union, and discussed practically all points in it, and whether they were acceptable.

Q. Now, in meeting with the representatives of the Union, did you tell them what the authority of your committee was?

A. Always.

Q. What was that?

A. That we were the negotiating committee and anything [fol. 207] that was presented to us we had to take back to the membership for a vote.

Q. You mean the operators?

A. The operators; the 118 corporations. They would not give us authority to sign it or agree to it even. But rather than have him meet all 118, we were selected to meet with him and bring back to our meeting anything that was presented to us.

Q. Did you report back to the meeting of your operators after negotiating with the Union?

A. After negotiating we did. We have not been able to since we were in the conciliator's office, but—

Q. Why is that?

A. Well, we got nobody to drive our cabs. If you take all Yellow Cabs off the street, our business is gone. We cannot afford to do that.

Q. After the meeting, after the negotiations commenced, but before the strike, at that time did all operators authorize your committee to enter into a contract on behalf of all of them?

A. Never. They contend that it is their business and they are not the only ones that are going to sign anything for it.

Q. Are you personally willing to sign the contract at this stage?

A. No, I am not.

Q. You say you are not?

A. No, sir.

Q. Mr. Sedam, who was a member of your committee, has signed it?

[fol. 208] A. He has. He was willing.

Q. Are other operators willing to sign the contract?

A. Some of them.

Q. What is your feeling as to their doing so?

A. That is their business. I wouldn't want them to sign it for me though.

Q. Did Mr. Slemmons and I ever meet with your committee, any of your meetings, and representatives of the Union, other than the meetings with the Federal Conciliator?

A. Are you speaking—

Q. A meeting where you were meeting with representatives of the Union?

A. No. I don't believe so. Just at the conciliator's office.

Q. Were they there at that time as attorneys representing your negotiation committee?

A. No, sir. I don't believe so.

Q. What?

Mr. Bassett: What? I can't hear the witness. You do all the talking here, let him answer.

The Court: His last answer was, "I don't believe so."

Q. Do you know whom we were representing?

A. The Service Corporation, I suppose. I—

Q. Did we at any time in connection with these meetings or afterwards undertake to dictate to your committee terms on which they should recommend action by the 118 corporations?

A. No, sir.

Q. What is the number of shifts in a normal work week?

[fol. 209] A. Fourteen shifts.

Mr. Cox: That is all.

The Court: Let's take a recess now.

(Recess)

Mr. Cox: I wonder if I could ask Mr. Hawkins a couple of more questions?

The Court: Yes.

Gentlemen, Exhibit 46, as I recall, this exhibit was admitted, but if there is any question about it, let's get it clear now. Any objection?

Mr. Bassett: I have no objection.

The Court: All right. It may be admitted.

(Plaintiff's Exhibit 46 for identification was received in evidence.)

By Mr. Cox:

Q. Mr. Hawkins, who decides when you will operate your taxicab?

A. I do.

Q. Is this affected in any way by the rules adopted by the operators' committee that you testified to?

A. Oh, yes, to a certain amount. The operators' committee realizes that cabs have to be, a certain amount of cabs have to be on the street at a certain time, and they try to figure it out so that they have enough cabs to cover our concessions.

Q. Can you change the hours when you operate your cab?

A. Yes, but you have to give four days' notice.

Q. Who fixes that four days' notice?

A. The operators' committee. I mean, it was voted on at [fol. 210] an owners' meeting, just because it was your cab, you couldn't intermittently operate it day or night, whenever you felt like it. You had to give notice and more or less have a regular procedure. If you are going to change that then, they want four days' notice to get somebody to take your place on that particular time.

Q. Now, you have testified that you were present at these two sessions before the Federal Conciliator's meeting with Mr. Lancaster and his committee. What is your recollection of the items on which there had been, there remained no agreement at the conclusion of those sessions?

A. Well, if I may, I don't keep a diary, but I do have the contract that I have, or the copy of the contract that I

have had with me that was read to our owners and so forth, and notations made on the side, and which ones were agreed upon. The final day that we were in front of the conciliator—

The Court: That would be May 18th, wouldn't it?

Mr. Cox: September 18th.

The Witness: September 18th.

A. (Continuing) I think we were in agreement on everything except in Article 1, Sections 4, 5 and 6. Everything else was more or less in agreement. I don't mean to say that we had agreed to sign it, because we didn't have that authority, but we had agreed that we would take it back to the body, and we felt the body possibly would; we didn't know.

[fol. 211] Q. Directing your attention to Article 7, as to dispatchers' wages and hours, had there been an agreement, as far as your committee was concerned, on a recommendation to be made to the 118 operators with respect to that?

(Objection.)

The Court: Well, ask another question, Mr. Cox. There may have been some confusion as to just how you put it.

By Mr. Cox:

Q. At the end of the Conciliator's meeting, do you recall what the position of your committee was as to the recommendations that you would make to the operators if a meeting could be arranged?

A. The Service Corporation employs about ten, and after figuring up the actual money, we felt that as a committee—we felt that we could possibly talk the owners into going along with it.

Q. Did the owners have an interest in the wages paid to the dispatchers?

A. Yes.

Q. What is that interest?

A. Well, it derived from our nut, as we call it,—

Q. The increase of the wages of dispatchers is going to

increase the contributions that you must make to the Service Company?

A. That's right.

(Colloquy between Court and Counsel.)

By Mr. Fox:

Q. You heard Mr. Lancaster's testimony about some discussions during these meetings with the conciliator concerning letters of agreement as to the handling of minor grievances; that is, to try to get something more similar to the [fol. 212] arrangement that Gray Top and Farwest have. Do you recall such discussions during these meetings?

A. There was—I don't recall just what they were called, but one of his points was he would like somebody assigned that he could go to in the case of somebody failing to receive overtime or holiday time or so forth. The committee said that they felt that they could—you must understand we couldn't say definitely we will do this; we didn't have authority to do that. If we went back to the operators' meeting and recommended that they appoint or elect someone, preferably Mr. Baiocchi, who has been in that capacity before, to handle all these, and he would be given the authority to deal with Mr. Lancaster in the question of these grievances, that we could get the body as a whole to allow them to do that.

Q. Your committee was in agreement to make this recommendation?

A. That's right.

Mr. Cox: That is all.

Cross examination.

By Mr. Bassett:

Q. Why wasn't that done, Mr. Hawkins?

A. That was part of this Union contract.

Q. Why didn't you do that?

A. We had no contract with the Union.

Q. Why didn't you recommend it to the owners?

A. We hadn't had a meeting with the owners, sir.

[fol. 213] Q. Why didn't you?

A. We have been unable to take our owners off the street.

Q. What?

A. We have been unable to pull all our owners off the street.

Q. Well, a lot of your owners are not operating at all, as I understand it, during this strike. Wouldn't that be a good time to have a meeting and decide on this?

A. I wouldn't think so.

Q. You wouldn't?

A. No, sir. If we pull all Yellow Cabs off the street, we got nobody to take care of our business.

Q. Do you have an office?

A. No, sir. Not my own personal one, no.

Q. Where do you keep—you are the chairman of this committee; you said you have been chairman quite a while, of the negotiating committee?

A. I don't have an office to keep records in.

Q. Do you have a secretary, a typist?

A. No, sir.

Q. Who does your typing for you?

A. As chairman of this committee?

Q. Yes.

A. We type it.

Q. Who is "we"?

A. Well, I do, as chairman.

Q. Do you run a typewriter?

A. No, sir.

Q. Who does it for you?

A. I keep notes.

[fol. 214] Q. Who does the typing for you?

A. When there is such as a letter to be gotten out, Mr. Booth does it, the same as he gets out the bulletin.

Q. Who drafts the—whose language is used in the letter, yours or Mr. Booth's?

A. A little of both, I would say.

Q. Mr. Booth is an employee of the Service Company, isn't he?

A. Yes, sir.

Mr. Bassett: Would you mark this, please.

(Yellow Cab Company letter dated June 16, 1958, was marked for identification as Defendants' Exhibit 47.)

Q. Is that your signature on Exhibit 47?

A. Yes, that is my signature.

Q. Do you or any of the other owner-operators have any letterheads of stationery that you can use for your company or companies?

A. No, I don't believe we have.

Q. Why do you go up to 902 Madison and use the stationery of the Yellow Cab Company?

A. The typewriter that it is written the Service Company owns.

Q. The Service Company owns it?

A. Yes.

Q. And they pay the man who does the writing and the drafting?

A. Not necessarily the drafting, but the writing.

Q. Is that your language in here; did you compose that letter?

[fol. 215] A. Part of it. I mean, I gave him what we wanted written, and he typed it.

Q. You told him what you wanted written?

A. (No response.)

Mr. Bassett: I will offer Exhibit 47 in evidence.

By Mr. Bassett:

Q. Where do you receive mail in connection with the business of your committee?

A. 902 Madison.

Q. The Union writes you at 902 Madison; is that right?

A. Yes.

Mr. Cox: No objection to 47.

The Court: Exhibit 47 will be admitted.

(Defendants' Exhibit No. 47 for identification was received in evidence.)

Mr. Bassett: Would you mark this, please?

(Local Union 465 letter of June 17, 1958, was marked for identification as Defendants' Exhibit No. 48.)

Q. Did you receive the original of this letter, Defendants' Exhibit 48, from Mr. Lancaster? What is the date of that letter?

A. June 17th.

Q. Isn't that an answer to your letter of June 16th that you signed?

A. I believe it is.

Q. And you received that where?

A. Out of my mail slot, 902 Madison.

Q. At the office of the plaintiff Service Corporation?

A. We have a big box there with each—each one has an individual box for any mail addressed to him. It can be [fol. 216] pigeonholed, and we get mail from it once a day or however often it is put in there.

Q. And that is the way you conduct your business as chairman of the committee, that is the way you conduct your correspondence with the Union?

Mr. Cox: No objection.

The Court: There being no objection, Exhibit 48 will be admitted.

(Defendants' Exhibit No. 48 for identification was received in evidence.)

A. Yes, sir.

Q. Showing you Defendants' Exhibit 22—by the way, how long have you been an owner of a Yellow Cab?

A. I believe it was February 5, 1956.

Q. Well then, you were there in November, 1957, when this bulletin, Exhibit 22 was posted or circulated?

A. Yes.

Q. Calling your attention down here to where it says: "Drivers: 1. All drivers will be hired, fired and disciplined by the personnel manager." Do you remember that?

A. I remember reading that bulletin at that time.

Q. Who made that rule; did you make it?

A. No, sir.

Q. You didn't make it?

A. No, sir.

Q. Well, it is signed by Mr. Wenck, President of the Service Corporation. Do you know whether he made it?

A. I would venture to say he did not, but—

Q. Don't venture. Do you know?

[fol. 217] A. No.

Q. Do you know who made the rule?

A. The rule here—if I may read the whole thing through a minute?

Q. Well, you have seen a lot of these bulletins, haven't you?

A. Yes, but not this particular one, not this dated one.

Q. Go ahead.

A. It starts out at the top, "Rules and Regulations Adopted at the Last Owners' Meeting are as follows:".

Q. Yes.

A. They were adopted by the owners.

Q. Who proposed them?

A. I imagine it was the different owners. We have a suggestion box.

Q. Well,—

A. We have a suggestion box and we welcome criticisms and constructive suggestions in it, and the suggestions are taken out and the Board mulls over them. If it seems good, they bring it up in front of the body. If the body votes to put it in effect, it is put into effect.

Q. Are you satisfied with this rule that: "All drivers will be hired, fired and disciplined by the personnel manager"?

A. Yes, I am satisfied; but whether I was or not, the majority must have been.

Q. Well, would you be satisfied with that if you didn't pay the wage scale to your driver and Mr. Lancaster took it up with the personnel manager, Mr. Baiocchi, and Mr. Baiocchi would pay what was coming to this man and de-

[fol. 218] duct it from your turn-ins, would you be satisfied with that?

A. Yes, I believe so.

Q. You think you would?

A. Yes.

Q. Do you think the others would?

A. Well, that would be clearly supposition on my part.

Q. Has anybody recommended it to the owners that it be done that way, just as you made this rule here?

A. I believe it has at different times, at operators' meetings.

Q. And they turned it down?

A. No, I don't believe so.

Q. Mr. Hawkins, why did you incorporate when you bought this cab from the Yellow Cab Company, do you know?

A. Well, I thought it was a good idea.

Q. Who suggested it to you?

A. I don't honestly recall now.

Q. Why do you think it was a good idea?

A. Well, I don't know very much about corporation law and so forth, but in doing it,—I forget, I think we incorporated for $5,000, I believe. It was just easier to keep books, I guess, and so forth. I don't honestly know.

Q. You don't know the reason for it. It was a condition of the sale of a cab to you that you incorporated, wasn't it?

A. Possibly it was, I don't know.

Q. Don't you remember that?

A. No, I don't. That is quite some time ago.

[fol. 219] Q. The owners of the Yellow Cab Company imposed that condition, didn't they?

A. I couldn't say for sure. If it is in the conditional sales contract, then they must have.

Q. That's right. Mr. Hawkins, here is one that is very recent, April 23, 1958, Exhibit No. 17. The first paragraph reads: "Attention owners. Very important. Due to the laxity of the owners in paying their city and state business taxes, (39 of you did not pay on time for January-February 1958), the following procedure has been ordered into effect by the President of Yellow Cab Service, Inc., and approved by the Board of Directors. Effective May 4, 1958 which is the beginning of the third bi-monthly period, the tax of .006 for the state and .001 for the city will be deducted each week. The office will then take care of the returns and pay them at the time they are due. This will save you time and effort and there will be no charge or cost to the owner for this service. Any corporation that receives these tax forms at their homes must bring them to Mr. Pearson as soon as they are received. Remember, this is

effective May 4th and does not cover the March-April tax which is due in May."

Who is Mr. Pearson?

A. He at that time was office manager.

Q. Office manager?

A. Yes.

Q. For the Yellow Cab Service Corporation?

A. Yes, sir.

Q. Did you say now that the owners voted on this proposi-
[fol. 220] tion as stated in the paragraph I just read?

(Objection.)

The Court: Objection sustained as to the form of the question.

By Mr. Bassett:

Q. I will ask you if the owner-operators voted on this and approved it?

A. I believe so.

Q. Before it was announced?

A. Yes, sir.

Q. Do you think so?

A. I believe so.

Q. Do you keep minutes of your meetings?

A. I don't. We have a secretary that does.

Q. Would that be in the minutes?

A. I believe so; yes, sir.

Q. Do you have any idea what date it was that you approved it?

A. No.

Q. Was it before this bulletin was issued or after?

A. Before.

Q. Before the bulletin was issued?

A. Yes, sir.

Q. Will you look at your minutes and bring them up here and show us where the owners approved it?

A. If I can find it.

Q. You are chairman of this negotiating committee?

A. Yes, sir, but that is not minutes of the negotiating committee. That is minutes of the owners' meeting.

Q. You have access to those minutes, don't you?

A. If I can find them. Our secretary has them at home, [fol. 221] I believe.

Q. Does your owner-operators' association, or whatever you call it, have officers?

A. Well—

Q. Do you have a president and secretary?

A. We have a secretary.

Q. Do you have a Board of Directors?

A. No, we have a secretary, a chairman.

Q. And he keeps the minutes?

A. The secretary keeps the minutes.

Q. And who was that?

A. Grace Foster, I believe.

Q. Who?

A. Grace Foster.

Q. Grace? A woman?

A. Yes.

Q. Is she an owner-operator or a driver?

A. Owner-operator.

Q. Can you get those minutes?

A. I don't know. If I can contact her, I possibly can.

Q. I wish you would do it. Do you think you can do it this afternoon?

A. I don't know, sir.

Q. I want to ask you just one other question: Mr. Hawkins, you have been sitting here in this courtroom since the commencement of the trial, haven't you?

A. Yes, sir.

Q. You have attended every session?

A. Yes, sir.

The Court: Any further questions of Mr. Hawkins?

[fol. 222] Mr. Cox: No.

The Court: You may step down, sir.

(Witness excused.)

WARREN SLEMMONS, called as a witness on behalf of the plaintiff, having been previously duly sworn, testified as follows:

Direct examination.

By Mr. Cox:

Q. I believe you testified when you were on the stand before, Mr. Slemmons, that you were one of the attorneys for the old Yellow Cab partnership and had some connection with the plan of liquidation which was carried out in 1956?

A. Yes, sir.

Q. In that connection, did you assist in the preparation of the forms which are represented in Defendants' Exhibits 2 and 3?

A. Yes, sir.

Q. Did you have anything to do with the insertion therein of a requirement that the purchasers of these cabs would incorporate?

A. Yes, sir.

Q. Tell the Court why that provision was inserted?

A. The reason for that was this: Prior to the time that Yellow Cab Company decided to liquidate, the Gray Top organization had liquidated its company operations, and with the consent of the City Council had sold its cabs to owner-drivers. Its physical setup was corporate in nature. [fol. 223] As I recall, there were some 41 corporations that were organized to take over the various cab operations formerly operated by the Gray Top Cab Company. It was our idea, before going before the City Council, to conform as near as we could to the Gray Top corporate setup so that we could have the same argument in front of the City Council as the Gray Top organization did.

Q. Directing your attention again to the second meeting which you attended in the office of the Federal Conciliator on September 18th, at the conclusion of that meeting, what, if anything, was the understanding as to the holding of future meetings between the bargaining representatives of the Yellow Cab owners and representatives of the Union?

A. At the conclusion of that meeting, Mr. Lancaster had submitted the form of contract which was—which is in evidence as Defendants' Exhibit 39—the problem was in presenting that contract to the membership of the Yellow Cab Corporations. Mr. Lancaster was requested to remove the pickets so that they could meet. As he has testified, he declined to take that responsibility for himself, but he did agree to call a meeting of the membership for that following Monday, which would have been September 29, 1958. It was my understanding that Mr. McPherson—

Q. September 22nd?

A. September 22nd, right, of '58. Mr. McPherson of the Federal Conciliator's office was to call me as to the result of that meeting. He did so sometime on that September [fol. 224] 22nd. At that time he informed me that the membership of the Local Union 465 had declined to remove the pickets, and that it was the responsibility of the cab operators to meet under other conditions. I advised Mr. McPherson that I would take no further action in the matter in the way of suits without first advising him. It was understood between the two of us there was no necessity for any further meetings because the contract had been submitted, which had been signed by Gray Top and approved by Farwest. Subsequently, I think it must have been within 24 or 48 hours after that, I called Mr. McPherson to advise him, in conformity with my understanding, that we were instituting suit. Mr. McPherson was out of town. Incidentally, I can give you the date, if you will give me the date that the complaint was verified, whatever that date was.

The Court: I can get into the act here. The 23rd of September, 1958.

A. (Continuing) On the 23rd of September, which was the following Tuesday, as I testified, I called Mr. McPherson. He was out of town. Thus, I couldn't conform to my promise to him. I did, however, call back and contact Mr. Peterson of the conciliation office and advised him as to the steps that we were proposing to take, and I asked him if he would transmit that information to Mr. McPherson.

Mr. Cox: You may examine.

[fol. 225] Cross examination.

By Mr. Bassett:

Q. Mr. Slemmons, do you say that the City Council required the Gray Top Cab Company to compel the purchasers of their cabs to incorporate?

A. No, sir.

Q. Do you know why Gray Top did impose that condition on the purchasers of its cabs?

A. No, sir.

Q. You do know, however, that the reason why the City Council permitted the Gray Top Cab Company to sell its permits in cabs to the drivers was that the company itself was bankrupt?

A. Yes, sir.

Q. Yellow Cab Company wasn't bankrupt when it asked leave to sell its cabs to the drivers?

A. No, sir.

Q. Mr. Slemmons, at the last meeting before the Federal Conciliator, you were the spokesman for the owner-operators as well as for the Service Company, were you not?

A. Let me put it this way, Mr. Bassett: I am not sure I like that "spokesman" term.

Q. That is not fair. I will agree with you. I will change that word. You did discuss before Mr. McPherson, and with the Union committee, problems which were peculiarly concerned with the owner-operators?

A. Yes, sir. We went over each provision of the contract, item by item, some of which I discussed and some of which I did not; some of which were discussed for the [fol. 226] purpose of my own information, some which were discussed for other purposes.

Q. And you were there, of course, at the request of Mr. Wenck?

A. Mr. Wenck, that's right.

Mr. Bassett: Thank you. That is all.

Mr. Cox: That is all.

(Witness excused.)

Mr. Slemmons: Your Honor, we have other witnesses that are owner-operators that could be called that would

give the same testimony as Mr. Hawkins. I see no real purpose for doing so, because I think the facts are relatively clear.

The Court: Do both sides rest then?

Mr. Cox: On the matter of jurisdiction.

Mr. Little: That's correct.

Mr. Bassett: I don't think there is anything left, your Honor. I think we have gone over the entire field.

(Colloquy between Court and Counsel.)

Mr. Little: I want to offer at this time the photostatic copies of the portions of the file in the Ayres case. I have had them photostated overnight. I would like to hand these to the Court (handing to the Court).

(Photostat copies from Cause No. 519 789 were marked for identification as Plaintiff's Exhibit 49.)

The Court: I take it there is no objection to this?

[fol. 227] (Colloquy.)

The Court: Why don't we leave this until 1:30 so Mr. Bassett can look it over.

(Colloquy between Court and Counsel.)

The Court: We will recess now until 1:30.

(Recess)

The Court: Is there any objection to Plaintiff's Exhibit No. 49? That is the Ayres case file.

Mr. Bassett: A general objection that it is wholly irrelevant and immaterial to any issue in this case. I don't see that it has any bearing on the issues here.

The Court: Overruled. Exhibit 49 may be admitted.

(Plaintiff's Exhibit 49 for identification was received in evidence.)

The Court: Both sides rest then?

Mr. Bassett: Yes, the defendant rests.

Mr. Little: Yes, we rest.

The Court: I would like to hear first from the defendant

on the question of jurisdiction. I will then hear from the plaintiff on the question of jurisdiction.

* * * * * * *

[fol. 250] JUDGE'S CERTIFICATION TO STATEMENT OF FACTS OMITTED IN PRINTING

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[fol. 228] DEFENDANTS' EXHIBIT 4

ASSIGNMENT

THIS AGREEMENT, made this 4th day of October, 1956, between the NORTHERN PACIFIC RAILWAY COMPANY, a Wisconsin corporation, and GREAT NORTHERN RAILWAY COMPANY, a Minnesota corporation, hereinafter collectively referred to as the Railway Companies, and YELLOW CAB COMPANY, a co-partnership, hereinafter referred to as the Assignor, and YELLOW CAB SERVICE, INC., a Washington corporation, hereinafter called the Assignee;

WITNESSETH:

WHEREAS, the Railway Companies entered into an agreement with the Assignor dated April 2, 1946, modified by letter agreements of June 28, 1946, and August 22, 1946, covering the transportation of rail passengers and their hand baggage between the station of the Railway Companies and the wharves and docks of steamship and ferry lines in Seattle, Washington; and

RJC
WLT
FLS
HBK

WHEREAS, Assignor now desires to sell, assign and transfer its rights under and by virtue of said agreement of April 2, 1946, as modified, to the Assignee;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is mutually agreed between the parties hereto as follows:

1.

For valuable consideration, the receipt whereof by the Assignor is hereby acknowledged, Assignor hereby assigns and transfers to Assignee all of Assignor's interest in and to said agreement.

II.

The Railway Companies agree and consent to the assignment of said agreement and all rights thereunder from Assignor to Assignee.

III.

In consideration of said assignment and the consent of the Railway Companies thereto, Assignee assumes and agrees to perform, through its individual member companies, and be bound by all the obligations imposed upon Assignor by said agreement dated April 2, 1946, as modified and assigned, and Assignee further agrees that, to the extent of the terms of said agreement, it will be responsible for the actions of its individual member operating companies as though such acts or omissions of said operating companies were those of Assignee.

IV.

Said agreement, as hereby modified and assigned, shall remain in full force and effect in accordance with its terms between the Railway Companies and Assignee.

V.

The effective date of this agreement shall be February 5, 1956.

In Witness Whereof, the parties hereto have caused this agreement to be executed as of the date first herein written.

Northern Pacific Railway Company

By C. H. Burgess

Vice President

Great Northern Railway Company

By L. G. Pool

Vice President

Yellow Cab Company

By A. H. Wenck—Mgr. Partner

Yellow Cab Service, Inc.

By A. H. Wenck, Pres.

[fol. 229] THIS AGREEMENT, Made this 2nd day of April, 1946, between NORTHERN PACIFIC RAILWAY COMPANY, a Wisconsin corporation and GREAT NORTHERN RAILWAY COMPANY, a Minnesota corporation, parties of the first part, hereinafter collectively referred to as "Railway Companies", and YELLOW CAB COMPANY, a co-partnership, party of the second part, hereinafter referred to as "Cab Company".

In consideration of the mutual dependent promises stated in this agreement the parties agree:

I.

Railway Companies own and operate the King Street Passenger Station in Seattle, Washington, and their respective passenger trains arrive at and depart from that station.

II.

This agreement is entered into at a time when the Cab Company is, and for an indefinite period of time will be, subjected in its operations to rules and regulations of the Office of Defense Transportation and of other Federal, State and Municipal Governmental agencies. The Cab Company is further faced with restrictions in its operations imposed in the use of gasoline and tires. The agreements of the Cab Company herein are therefore subject to any and all limitations and operating restrictions that are imposed by, or result from, any and all such rules, regulations or limitations.

DHE
FRB
RWC
FJG

III.

Railway Companies in accordance with their tariffs on file with the Interstate Commerce Commission and the Department of Public Service of Washington issue and participate in the issuance to passengers of through tickets that provide for a continuous passage over Railway Companies' lines and those of other railways and steamship and ferry lines and said through tickets provide for transportation of said passengers and their hand baggage at Seattle between the station of Railway Companies and the

wharves and docks of steamship and ferry lines by means of taxicabs. Cab Company agrees to provide such transportation of passengers and their hand baggage between said station of Railway Companies and wharves and docks of steamship and ferry lines at Seattle by its taxicabs, subject to the terms and conditions hereinafter provided.

IV.

Cab Company in order to satisfactorily transport such passengers will, at the arrival time of Railway Companies' passenger trains at their said station in Seattle, have available at its customary standing place adjacent to said station a sufficient number of its taxicabs to readily accommodate and transport all such through passengers and their hand baggage to the wharves and docks of steamship and ferry companies at Seattle. Cab Company will in so far as possible meet all steamship and ferries arriving at wharves and docks in Seattle to accommodate and transport all such passengers and their hand baggage to Railway Companies' station.

V.

Cab Company agrees to have its said taxicabs assigned to this transportation of through passengers and their hand [fol. 230] baggage operated by sober and courteous drivers wearing uniform caps lettered in such manner as to plainly indicate to such passengers that they are employes of Cab Company. Cab Company further agrees to remove from said transportation service any driver who for any reason is unsatisfactory to the Superintendent of the said King Street Passenger Station upon being requested so to do by said Superintendent.

VI.

Each of said Railway Companies shall compensate Cab Company for said transportation of such passengers and their hand baggage at the following rates:

(a) for each passenger, not traveling as a member of a party or group, and for each passenger traveling as

a member of a party or group of nine or less members—Fifty Cents (50¢). *$1.00*

(b) for each passenger traveling as a member of a party or group of ten or more members—Twenty-five Cents (25¢). *50¢*

A party or group shall in general consist of passengers traveling between the same origin point or destination and Seattle and associated together for some common purpose, such as a conducted tour, servicemen traveling on government orders, contractor's work parties, etc. What may constitute a party or group is difficult of actual definement and the determination of each of the Railway Companies shall in this respect be final and binding on Cab Company.

## VII.

Settlement for the transportation of such passengers and their hand baggage shall be made in the following manner: Cab Company shall as soon as possible after the conclusion of each calendar month render a bill to each of Railway Companies for all such passengers so transported during the preceding calendar month for said Railway Company. Said bill shall be submitted to the officer designated by each of said Railway Companies to receive same. Said bills shall be accompanied by the transfer coupons or memoranda showing in detail form and number, the railroad issuing the ticket, the originating point and destination, and date of sale of ticket held by said passenger, together with the date that said passenger was so transported by Cab Company. Each of Railway Companies shall, as soon thereafter as the necessary checking of such memoranda submitted by Cab Companies permits, make monthly payments to Cab Company at Seattle.

## VIII.

Cab Company shall and will protect, indemnify and save harmless Railway Companies, or either of the of and from any and all claims, suits, actions, demands, damages, costs,

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Italicized material handwritten.

expenses or liabilities on account of any personal injury to or death of any of the employes of Cab Company while in, upon or about the premises of Railway Companies, whether such injuries or death shall be caused by the negligent or improper act or omission of Railway Companies, or of either of them, or any employe, agent or officer thereof.

[fol. 231]

## IX.

Cab Company shall conduct the transportation service in its own name, and shall not display the name of either of Railway Companies upon or about any of its vehicles. Cab Company shall perform the service according to its own manner and methods and with and by its own vehicles and means and solely with its own employes, free from any control whatever of Railway Companies, except only with respect to the result of its service, it being the intention of the parties hereto that Cab Company shall be and remain a common carrier and an independent contractor and nothing herein contained shall be construed as inconsistent with that status.

Cab Company shall and will protect, indemnify and save harmless Railway Companies, or either of them, of and from any and all loss, claims, suits, actions, demands, damages, costs, expenses or liability on account of any personal injury to or death of any employe or employes of Railway Companies, or any third person or persons, or on account of loss or destruction of, or damage to the property of Railway Companies, or either of them, or of any third person or persons, caused by or resulting in any manner from any acts or omissions, negligent or otherwise, of Cab Company, or any of its agents, servants or employes while on or about the premises of Railway Companies or in performing or failing to perform any of the services or duties on the part of the Cab Company to be performed hereunder.

## X.

Cab Company shall in the performance of the services hereinabove mentioned be deemed to be a common carrier of passengers and baggage and it hereby assumes all risk of and liability for personal injuries or death of passengers

while in its custody and for all loss of or damage to their baggage in its possession, and all risk of and liability for personal injuries or death of any third person arising or growing out of its operation of its transportation service, and Cab Company shall and will indemnify and save harmless the Railway Companies, their officers and employes, or any of their connecting line transportation companies or transportation companies participating in any way in said through transportation, their officers and employes, of and from any and all claims, suits, actions, damages, costs, charges or liabilities by or to any such person or his legal representatives on account of personal injuries or death, or on account of loss of or damage to the baggage of any such passenger while being transferred or transported by Cab Company as hereinbefore provided.

## XI.

Cab Company shall, at its own expense, procure and keep in full force and effect, during the entire life of this agreement, public liability insurance covering Railway Companies and Cab Company, and each of them, from and against any and all liability, claims, demands, causes of action, judgments, costs and expenses of whatsoever nature arising from or growing out of injury to or death of any persons whomsoever, directly or indirectly caused by or in any manner arising out of any act or omission of Cab Company, its officers, solicitors, agents or employes in connection with the carrying on of the business of Cab Company under this agreement, including, among other things, the operation of motor vehicles engaged in the [fol. 232] transportation of passengers and baggage hereunder. Said insurance shall be carried in a company satisfactory to Railway Companies and shall run in favor of each of Railway Companies and Cab Company. Cab Company shall be permitted hereunder to furnish insurance protection to Railway Companies by means of an "excess policy", providing no insurance protection on the first Five Thousand Dollars ($5,000.00) for liability for injury to or death of any one person, and no insurance protection on the first Ten Thousand Dollars ($10,000.00) for liability for injury to or death of more than one person in any one

accident. The amount of said insurance shall be limited to not less than Forty-five Thousand Dollars ($45,000.00) in excess of said Five Thousand Dollars ($5,000.00) for liability for injury to or death of any one person, and not less than Ninety Thousand Dollars ($90,000.00) in excess of said Ten Thousand Dollars ($10,000.00) for liability to or death of more than one person in any one accident. Cab Company shall furnish each of Railway Companies with a certified copy of the policy or policies of said insurance and of all endorsements and extension agreements thereto pertaining to this protection.

XII.

Cab Company shall, in addition to indemnifying Railway Companies as aforesaid, assume the handling and defense of any such claims, suits or actions as are mentioned in paragraphs Nos. VIII, IX and X hereof upon being tendered the defense of such claims, suits or actions by either of Railway Companies; and upon failing to assume such handling and defense shall be liable to Railway Companies, or either of them, for the reasonable value of the services rendered by them, or either of them, in the handling or defense of such claims, suits, or actions, including reasonable attorney's fees.

XIII.

This agreement shall take effect as of the 2nd day of April, 1946, and shall continue in full force and effect until terminated as herein provided.

This agreement may be terminated by written notice given by either party to the other party, or as to either of Railway Companies by notice to or from said Railway Company, on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date on which such notice shall be given.

XIV.

Cab Company shall not assign this agreement or any right hereunder or interest herein, nor sublet the whole or any part of the work to be performed by it hereunder, without the written consent of Railway Companies.

XV.

Subject to the provisions of Section XIV hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

[fol. 233] XVI.

This agreement, when it becomes effective, shall operate to terminate and supersede all previous agreements between either of the Railway Companies and Cab Company, covering the transportation for the Railway Companies of passengers and their hand baggage at Seattle between the station of Railway Companies and the wharves and docks of steamship and ferry lines, including those that are now or may heretofore have been in effect between any predecessors in interest of Cab Company, and including that contract between Seattle Taxicab and Transfer Company, a corporation, and Great Northern Railway Company, a corporation, dated April 1, 1915, as amended by supplemental agreement between the same parties dated July 24, 1916; provided, however, that such termination shall not affect or impair any of the rights or obligations of the parties or either of said Railway Companies under said aforementioned agreements, which had accrued prior to such termination.

In Witness Whereof, the parties hereto have caused this agreement to be executed in triplicate as of the date first herein written.

Witnesses:
E. L. Ledding
J. L. Larson

Northern Pacific Railway Company,
By H. E. Stevens
Its Vice President

Great Northern Railway Company
By C. O. Jenks
Its Vice President

S. E. Luft
P. B. Hauber

Parties of the First Part.

Yellow Cab Company
By A. H. Wenck
Its Managing Partner

Joseph E. Gandy
Dorothy McPhee

Party of the Second Part.

[fol. 234] DEFENDANTS' EXHIBIT 5

ASSIGNMENT

THIS AGREEMENT, made this 4th day of October, 1956, between the NORTHERN PACIFIC RAILWAY COMPANY, a Wisconsin corporation, and GREAT NORTHERN RAILWAY COMPANY, a Minnesota corporation, hereinafter collectively referred to as the Railway Companies, and YELLOW CAB COMPANY, a co-partnership, hereinafter referred to as the Assignor, and YELLOW CAB SERVICE, INC., a Washington corporation, hereinafter called the Assignee;

WITNESSETH:

WHEREAS, the Railway Companies entered into an agreement with the Assignor dated April 1, 1946, covering the right of Assignor to occupy taxicab space at King Street Station in Seattle, Washington; and

WHEREAS, Assignor now desires to sell, assign and transfer its rights under and by virtue of said agreement of April 1, 1946, to the Assignee;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is mutually agreed between the parties hereto as follows:

I.

For valuable consideration, the receipt whereof by the Assignor is hereby acknowledged, Assignor hereby assigns and transfers to Assignee all of Assignor's interest in and to said agreement.

II.

The Railway Companies agree and consent to the assignment of said agreement and all rights thereunder from Assignor to Assignee.

III.

In consideration of said assignment and the consent of the Railway Companies thereto, Assignee assumes and

agrees to perform, through its individual member companies, and be bound by all the obligations imposed upon the Assignor by said agreement dated April 1, 1946, as assigned, and Assignee further agrees that, to the extent of the terms of said agreement, it will be responsible for the actions of its individual member operating companies as though such acts or omissions of said operating companies were those of Assignee.

IV.

Said agreement, as hereby assigned, shall remain in full force and effect in accordance with its terms between the Railway Companies and Assignee.

V.

The effective date of this agreement shall be February 5, 1956.

In Witness Whereof, the parties hereto have caused this agreement to be executed as of the date first herein written.

Northern Pacific Railway Company

By C. H. Burgess

Vice President

Great Northern Railway Company

By I. G. Pool

Vice President

Yellow Cab Company

By A. H. Wenck, Mgr. Partner

Yellow Cab Service, Inc.

By A. H. Wenck, Pres.

[fol. 235] THIS AGREEMENT, Made this 1st day of April, 1946, between NORTHERN PACIFIC RAILWAY COMPANY, a Wisconsin corporation, and GREAT NORTHERN RAILWAY COMPANY, a Minnesota corporation, parties of the first part, hereinafter referred to as "Railway Companies," and YELLOW CAB COMPANY, a co-partnership, party of the second part, hereinafter referred to as "Cab Company."

In consideration of the mutual dependent promises stated in this agreement the parties agree:

I.

The Railway Companies own and operate the King Street Passenger Station in Seattle, Washington, and their respective passenger trains arrive at and depart from that station.

II.

This agreement is entered into at a time when the Cab Company is, and for an indefinite period of time will be, subjected in its operations to rules and regulations of the Office of Defense Transportation and by other Federal, State and Municipal governmental agencies. The Cab Company is further faced with restrictions in its operations imposed in the use of gasoline and tires. The agreements of the Cab Company herein are therefore subject to any and all limitations and operating restrictions that are imposed by, or result from, any and all such rules, regulations or limitations.

III.

The Railway Companies in order to care for their incoming passengers desire to have at the King Street Station at all times when trains arrive a sufficient number of taxicabs in charge of sober and courteous drivers to serve incoming passengers. The Railway Companies having confidence in the Cab Company to do its best to meet the desires of the Railway Companies under the war-time conditions and restrictions, as heretofore mentioned, do therefore grant to the Cab Company the exclusive right to

occupy with taxicabs the space belonging to the Railway Companies situate adjacent to Third Avenue South alongside said King Street Station as shown enclosed in red lines on the map hereto attached and made a part of this agreement.

IV.

The Cab Company agrees to furnish and keep in attendance at said station during the hours when trains arrive a sufficient number of taxicabs in charge of sober and courteous drivers to serve incoming passengers, and agrees that passengers shall be transported to and from said station at reasonable rates, not to exceed those fixed by ordinance of the City of Seattle.

V.

The Cab Company agrees to remove from its service at that point any driver who for any reason is unsatisfactory to the Superintendent of the King Street Station upon being [fol. 236] requested so to do by said Superintendent.

VI.

The Cab Company shall, and it does hereby indemnify and hold harmless the Railway Companies and each of them from and against any and all liability for injury to or death of the officers, agents and employes of the Cab Company while upon the premises of the Railway Companies' said station in connection with the performance of this contract, whether due to the negligence of the Railway Companies or either of them or otherwise.

The Cab Company shall and will also indemnify and save harmless the Railway Companies and each of them and other railroads using the property of the Railway Companies, and lessees and licensees of the Railway Companies, for and on account of any and all liability and expense of any nature whatsoever arising or growing out of the conduct or acts of the officers, agents and employes of the Cab Company while on or about the said King Street Passenger Station of the Railway Companies in connection with the performance of this agreement.

VII.

The Railway Companies shall not by the execution of this agreement be held to have assumed any obligation to keep unauthorized taxicabs or other automobile drivers from using such space, but the Cab Company shall itself assume the obligation of protecting its rights under this contract.

VIII.

The Cab Company has installed and has in service a direct telephone situated on said station building adjacent to the established taxicab loading zone. The Cab Company shall pay to the Railway Companies a monthly rental of Five Dollars ($5) per month for each and every month during the life of this agreement. Said payment shall be made on the first day of each and every month in advance. Payment shall be made to the Superintendent of the King Street Station. Said monthly payment is for the privilege of maintaining said telephone at said station.

IX.

There is and shall be no rental, other than as provided in Paragraph VIII, due or to become due from Cab Company to the Railway Companies for the grants contained herein.

X.

The Cab Company shall not assign this agreement or any right hereunder or interest herein, nor sublet the whole or any part of its obligations hereunder, without the written consent of Railway Companies.

XI.

This agreement shall take effect as of the 1st day of April, 1946, and shall continue in full force and effect until terminated as herein provided.

[fol. 237] This agreement may be terminated by written notice given by either party to the other party, or as to either of Railway Companies by notice to or from said

Railway Company, on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date on which such notice shall be given.

## XII.

This agreement, when it becomes effective, shall operate to terminate and supersede all previous agreements between the parties hereto, including any that are now or may heretofore have been in effect with any predecessors in interest of Cab Company, including that contract between the parties of the first part herein and Yellow Cab Company of Seattle, a Washington corporation, dated September 1st, 1942; provided, however, that such termination shall not affect or impair any of the rights or obligations of the parties, or either of Railway Companies, under said aforementioned agreement which had accrued prior to such termination.

In Witness Whereof, the parties hereto have caused this contract to be executed by officers thereunto duly authorized.

Witnesses:

E. L. Ledding
J. L. Larson

Northern Pacific Railway Company

By H. E. Stevens
Its Vice President

Great Northern Railway Company

Louis Gerbich Jr.
Mildred R. Geror

By Edwin Matthias
Its Vice President

Parties of the First Part.

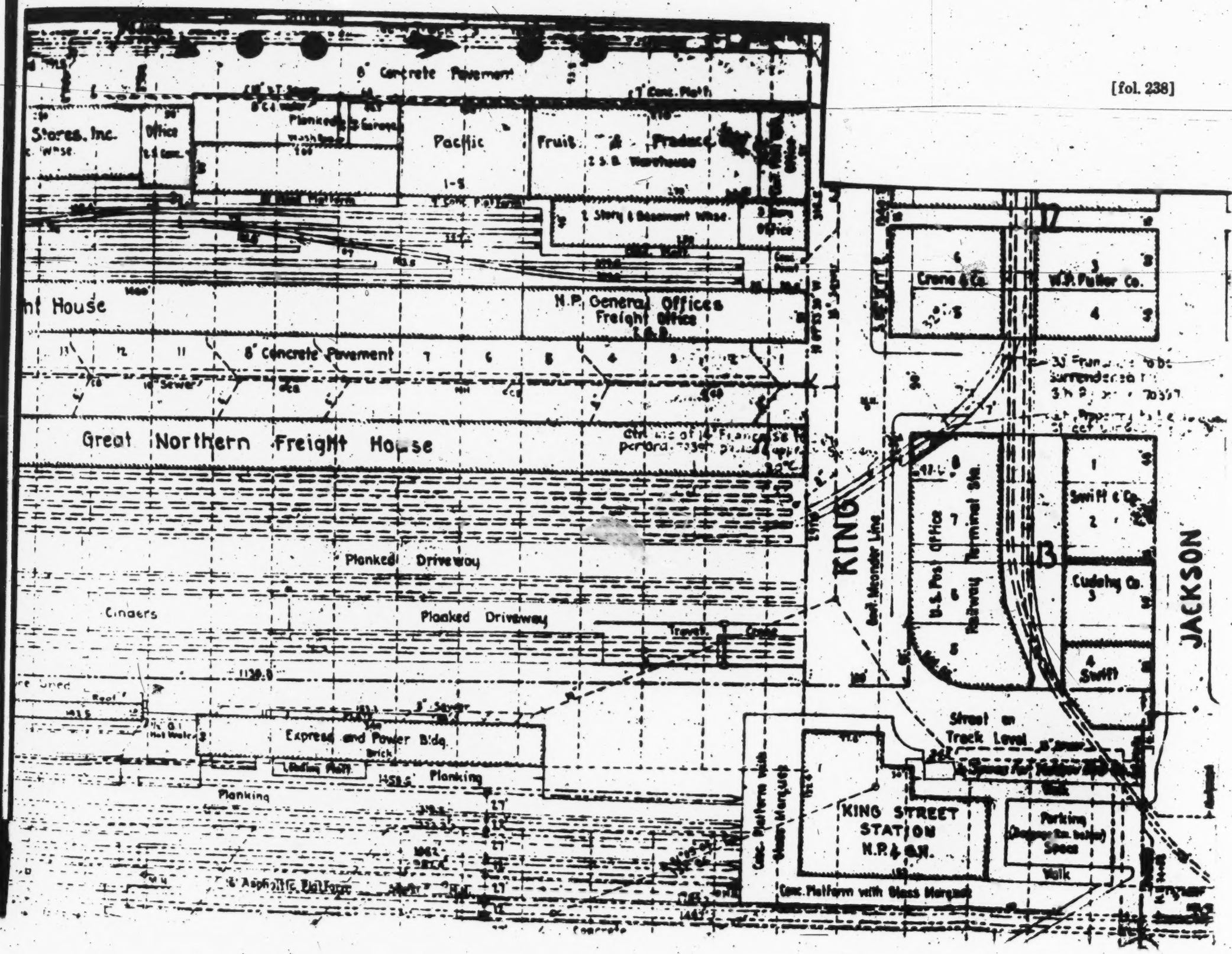
Yellow Cab Company

Joseph E. Gandy
Dorothy McPhee

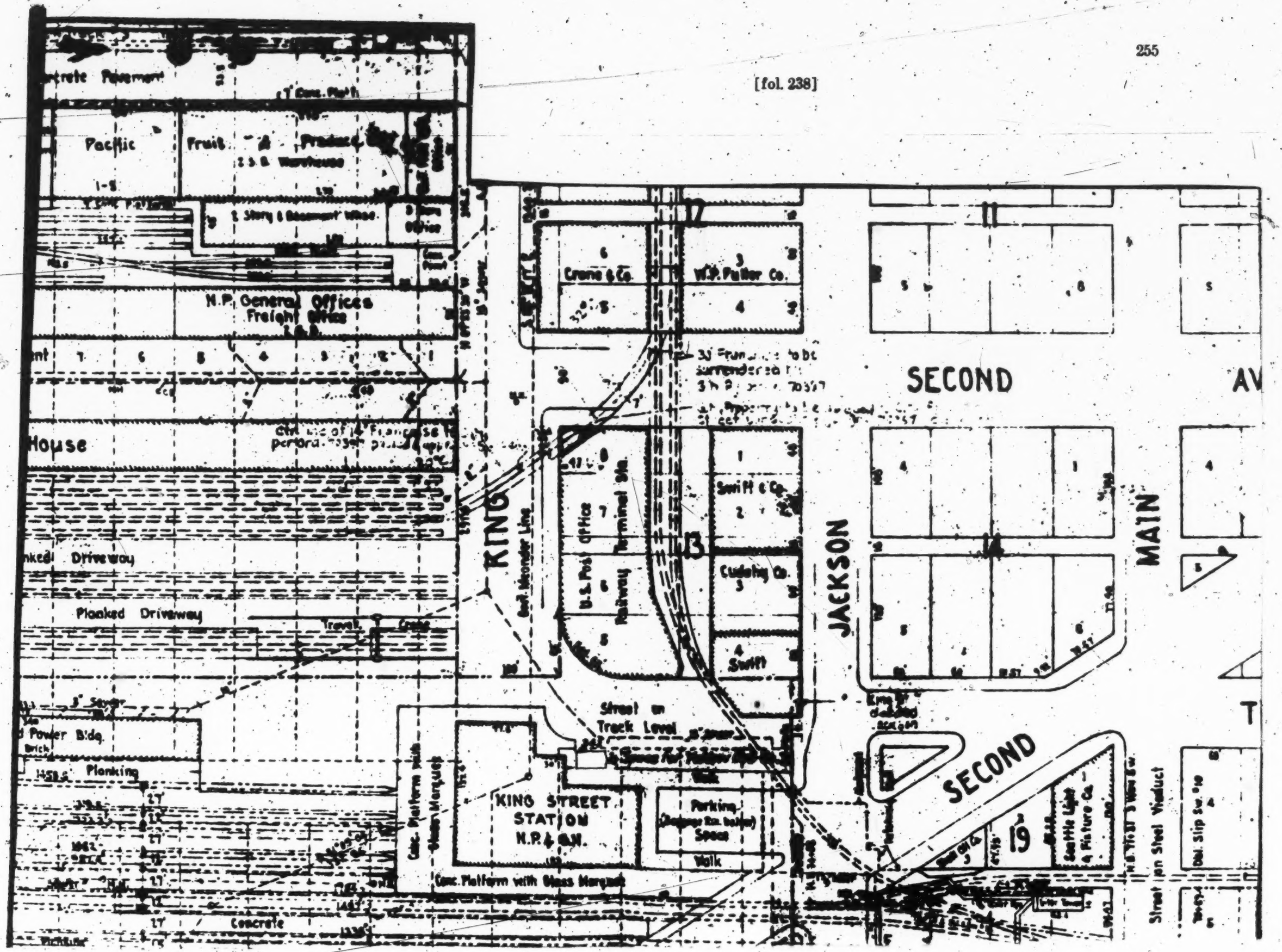
By A. H. Wenck
Its Managing Partner

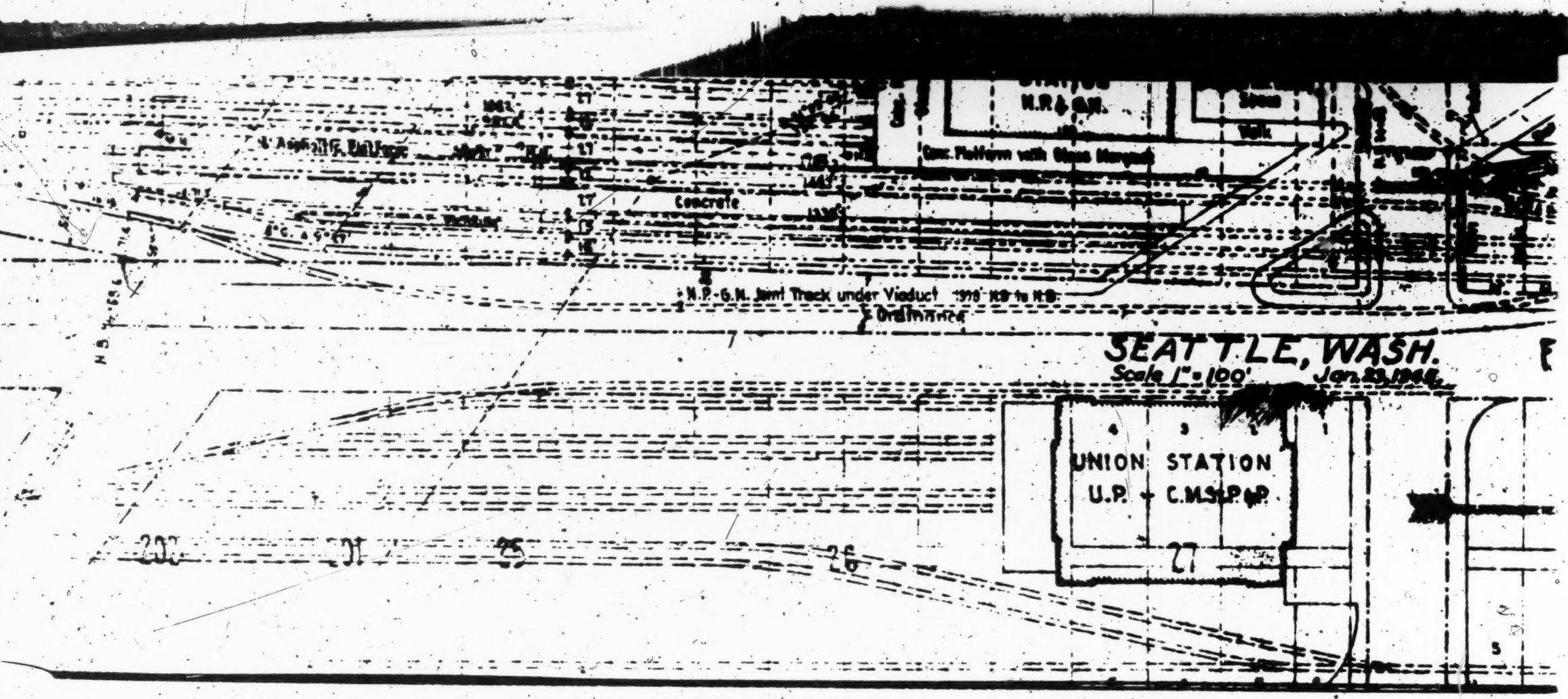
Party of the Second Part.

[fol. 238]


8" Concrete Pavement
Stores, Inc.
Office
Pacific
Fruit
Product
S.P. Warehouse
1-5
1 Story & Basement Wise.
Office
N.P. General Offices
Freight Office
Great Northern Freight House
8" Concrete Pavement
Planked Driveway
Cinders
Planked Driveway
Express and Power Bldg.
Planking
Planking
Crane & Co.
W.P. Fuller Co.
KING
JACKSON
Swift & Co.
Cudahy Co.
Swift
Street on Track Level
KING STREET STATION N.P. & G.N.
Parking
Walk
Conc. Platform with Glass Marquee

[fol. 238]


Pacific
Fruit
Product
2 3 & Warehouse
1-5
2 Story & Basement Wood
Office
N.P. General Offices
Freight Office
1 & 3
House
Driveway
Planked Driveway
Travel
Grade
3" Sewer
Power Bldg
Brick
Planking
Concrete
Crowe & Co.
W.P. Fuller Co.
KING
Bell Harbor Line
U.S. Post Office
Terminal Sta.
Railway
Swift & Co.
Cudahy Co.
Swift
JACKSON
Street on Track Level
KING STREET STATION N.P. & S.H.
Conc. Platform with Glass Marquee
Parking
Space
Walk
SECOND
Seattle Light & Picture Co.
Street on Steel Viaduct
Dkd. Slip No. 4
MAIN


Concrete
N.P.-G.N. Joint Track under Viaduct
Ordinance
SEATTLE, WASH.
Scale 1" = 100'
Jan. 23, 1946
UNION STATION
U.P. + C.M.St.P.&P.
27
26
25

N.P.-G.N. Joint Track under Viaduct 1918 K.B. to K.B.

Concrete

Conc. Platform with Glass Marquee

N.P. & G.N.

SEATTLE, WASH.

Scale 1" = 100'

Jan. 23, 1946

FOURTH

UNION STATION
U.P. + C.M.St.P.&P.

Richmond Hotel

25

26

27

28

[fol. 239] DEFENDANTS' EXHIBIT 22

YELLOW CAB SERVICE, INC.

BULLETIN

November 27, 1957

GRAY LINE CHARGES—It is absolutely necessary that the charge number be obtained from Gray Line each time a charge trip is made. Recently some charges were returned from Gray Line because of no charge number and consequently were charged back to the drivers involved.

SCHOOL RUN DRIVERS—May we again remind you that there is no school Friday, November 29, and also the workshop at 201 Minor North will close Friday. Thursday is Thanksgiving and both schools will, of course, be closed.

ACCIDENTS—There are certain responsibilities on the part of our drivers in the event of an accident—the name and address of all occupants of the cab must be obtained, regardless of circumstances. Also, the dispatcher must be notified immediately of the occurrance of any accident. The importance of securing the names and addresses of all passengers is so great that it will be necessary to suspend anyone who fails to obtain them until such time as the driver involved furnishes these names and addresses.

RULES AND REGULATIONS adopted at the last owners meeting are as follows:

OWNERS:

1. Owners may choose their shifts and days off.
2. Owners will designate shifts that their cabs are to be covered by drivers and owners will be responsible to see that their cabs are available for these shifts.
3. Owners must give 4 days notice before changing their shifts and days off.
4. Owners must give 4 days notice before changing the shifts that their cabs are to be covered by drivers.

DRIVERS:

1. All drivers will be hired, fired and disciplined by the personnel manager.
2. Drivers will be assigned shifts, days off, emergency leaves, vacations, etc. exclusively by the personnel manager.
3. Drivers assigned regular shifts will be responsible for working their respective shifts and failure to work regularly assigned shifts will be justification for discharge.
4. Drivers in uniform, with a record for good production and a clear accident record will be given priority on all lists, both regular and extra.

CABS:

1. All cabs will be assigned regular shifts with regular days off.
2. Cabs without regularly assigned drivers will be placed on the first available list for each shift.
3. Cabs which are vacant because of no shows, illness, vacations, or any other reason will be assigned drivers after all cabs without regular drivers are manned.
4. Vacant cabs will be assigned to their respective lists as they come in off shift.

FRIDAY, November 29 will be the first real Christmas shopping day and the cab business should be very good. You may expect very heavy traffic in the downtown area during the afternoon.

OWNERS driving on the day shift can do a lot towards reducing the congestion at the gas pumps between the hours of 3:30 PM and 5:00 PM by having their cabs gassed and serviced while eating lunch or stopping by the garage during the quiet time of the day.

DEFENSIVE DRIVING—Last week our score was 3 chargeable accidents out of a total of 10 collisions. A good many of

the non-chargeable accidents could have been prevented by the application of defensive driving. Our chargeable accidents were hitting a pole, striking a parked car and making a quick stop which injured the passenger.

YELLOW CAB SERVICE, INC.
A. H. Wenck, President

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[fol. 240] DEFENDANTS' EXHIBIT 24

| | | |
|---|---|---|
| Total Turn In by 118 Corporations | | |
| July 1, 1957 thru June 30, 1958 | | $1,429,914.02 |
| Yearly average for 120 Cabs | | 11,915.95 |
| Total Service Charge or Service Corporation Revenue | | |
| July 1, 1957 thru June 30, 1958 | | $ 162,988.80 |
| Total Billings to Railroads for Transfers | | |
| July 1, 1957 thru June 30, 1958 | | $ 1,436.55 |
| Bow Lake Revenue | $141,460.80 | |
| Boeing Field Revenue | 14,601.60 | |
| | | 156,062.40 |

This is inbound from Field to Seattle and is included in total turn ins of $1,429,914.02.

No. 526958

YELLOW CAB SERVICE CO.
Plaintiff

vs

INT. BROTHERHOOD OF TEAMSTERS ET AL.
Defendant

[fol. 241] DEFENDANTS' EXHIBIT 38

(Letterhead of Little, LeSourd, Palmer, Scott & Slemmons, 15th Floor, Hoge Building, Seattle 4, Washington.)

October 3, 1958

Mr. George Lancaster
Taxicab Drivers and Chauffeurs
Union Local No. 465
552 Denny Way
Seattle, Washington

Dear Mr. Lancaster:

You will recall that some question has been raised by Mr. Bassett as to the willingness of Yellow Cab Service, Inc. to enter into the standard form of labor contract which, as I understand it, prevails in other cab operations in Seattle. In this connection, I enclose your standard form of agreement which bears the signature of Yellow Cab Service, Inc. by its President, Mr. Wenck, as well as the signatures of 19 independent Yellow Cab corporations. It will be appreciated of course that we have not had an opportunity to determine whether other separate Yellow Cab corporations desire to enter into the agreement because of the inability to reach the parties involved during the current picketing of the premises at 902 Madison Street, Seattle.

You will realize, I am sure, that it is our belief and often expressed opinion that Yellow Cab Service, Inc. acts solely for itself and not on behalf of the other Yellow Cab corporations.

Very truly yours,

LITTLE, LESOURD, PALMER,
SCOTT & SLEMMONS

By /s/ WARREN R. SLEMMONS
Warren R. Slemmons

WRS:jpt
Enc.

[fol. 242] DEFENDANTS' EXHIBIT 39

# AGREEMENT

THIS AGREEMENT shall become effective and shall be in full force and effect when signed by and between ..... ..... and TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION No. 465, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is as follows:

## ARTICLE I
### Jurisdiction

Section 1. This agreement shall cover all employees of the employer who are engaged in driving cabs and Dispatchers and whether working full or part time, or in a dual or combination capacity. Employees (Drivers and Dispatchers) as used in this Agreement shall be defined as employees working in the trade, but who do not own any investment in any taxi cab or taxi cab corporation.

Section 2. It is further agreed that, as a condition of employment each employee not now a member of the Union shall become a member of the Union on or after the thirtieth (30th) day following the beginning of his employment or the effective date of this Agreement, whichever is later. Any employee now a member of this union shall maintain said membership as a condition of employment. Further, any liberalization from the Union's point of view which may be made in the Union Shop Provision as defined in the Labor-Management Relations Act, either by Congressional Amendment or judicial decision, shall be adopted by the parties and made a part of this Agreement.

Section 3. *New Hires and Terminations*

The Employer agrees to furnish the Union each week with a list of all new employees and all employees who have been terminated.

Section 4. *Pay Roll Deduction*

For such employees of the Company as individually and voluntarily certify in writing that they authorize such deductions and for the duration of this contract, the Employer agrees to deduct from the first pay of each month the Union dues, in an amount not to exceed the union provision in effect. Such amount shall be remitted promptly to the duly designated officer of the Union. For such employees of the Company as individually and voluntarily certify in writing that they authorize such deductions. The Employer agrees to deduct Union Initiation fees and Reinstatement fees in an amount not to exceed the Union provision in effect, and shall be remitted to the duly designated officer of the Union in the same manner as dues. Upon request of the Company by the Union, it shall have access to the list of employees on the Company payroll or accurate copies thereof, not more frequently than once a month.

Section 5. *Investors and Owners*

The Employer (which includes Investors and Owners) agree to hire at least one non-investor member of the Union for a full shift each day such cab is operated.

Section 6. *Company Rules*

The employees as defined in Article I, Section 1, of the various employers shall be governed by company working rules and conditions on all jobs. The Employer agrees that such company rules shall be binding equally on employees, owners and investors and any penalties for violations of such rules shall be uniform. Such company working rules must not conflict with this agreement.

## ARTICLE II

### Mechanical Work

Section 1. No employee covered by this Agreement shall be required or permitted to do any mechanical work on any of the employer's vehicles, except in case of emergency in order to return car to the employer's garage.

Section 2. *Cleaning*

No employee shall wash or polish any equipment. The driver shall wipe off the cab with a dry cloth and clean windows and interior of the cab. No employee will be permitted to gas, oil, grease or service the equipment in any way.

Section 3. *Traffic Ordinance*

Drivers will be expected to live up to all City Traffic Ordinances and failure to do so will make them liable for any fine or punishment that the law may impose, except in cases where someone in authority has given a driver an order to do otherwise, in which case the Employer agrees to accept all responsibility.

[fol. 243] Section 4. *Accidents*

Drivers will not be allowed to pay for accidents of any company cars or private cars or to passengers or pedestrians and the Employer agrees to settle such accidents at their own expense.

Section 5. The employer's vehicles and all equipment pertaining thereto shall at all times conform to state laws and city ordinances.

## ARTICLE III

Section 1. *Seniority*

When shifts are eliminated, added or changed, the Employer agrees to post notice three (3) days in advance and the shift shall be bid for and filled according to seniority of the drivers and dispatchers. No "bumping" of drivers or dispatchers will be permitted. The Employer will be permitted 30 days to break in new dispatchers before bids are posted for open shifts.

Section 2. It is agreed that all drivers and dispatchers shall be given their regular turn of getting on the regular shift, regular extra driver or dispatchers to regular relief, regular relief to regular driver or dispatcher and in no instance shall an outside employee step over the heads of the above classified drivers or dispatchers.

Section 3. In event of slack business and the laying off of drivers or dispatchers becomes necessary, the last driver or dispatcher hired shall be laid off first. The Employer agrees that upon rehiring, the drivers or dispatchers laid off who are still unemployed shall be rehired before anyone else is hired. Women dispatchers' seniority does not extend to driving.

Section 4. *Discharge*

It is understood and agreed that the employer shall be the sole judge of the competency of all employees; provided, however, that no employee shall be discharged or discriminated against in any way because of membership in the Union or activities in its behalf; and provided further, that the employer shall state, in writing, the reason or reasons for the discharge of employee (illegible) copy of which shall be furnished the Union immediately, but in no case later than forty-eight (48) hours after discharge. Thereafter, any appeal that the Union might take in reference to employees shall be stated in writing and furnished the employer within seventy-two (72) hours from time of receipt of discharge notice, after which it shall be handled as a dispute.

Section 5. *Handling of Disputes*

There shall be no strike or lock out during the life of this agreement. All disputes and grievances or misunderstandings between the parties which arise during the life of this agreement shall be handled in the following manner:

First, an attempt shall be made by the Union and the Employer representatives to amiably resolve the matter.

Secondly in the event that the parties cannot resolve the matter, they shall choose a neutral third party to act as arbitrator and his decision in the matter shall be final and binding on both parties.

Section 6. *Uniforms*

Drivers shall dress neatly in dark suit, shirt and tie or uniform as he may prefer. When uniforms or caps are

required by the employer, he shall furnish same at his own expense and he shall also pay upkeep on same. All uniforms and caps furnished shall be the property of the employer.

## ARTICLE IV
### Classifications

Section 1. The Drivers shall be classified as follows:

Regular drivers (those who have a regular steady shift 5 days a week)
Regular relief drivers (those who have steady 5 days a week relief work.)
Regular extra drivers (those available for full time employment)
Extra drivers (those called to work to fill in when regular men are not available; these men doing this work will not be listed on the regular seniority list).
A separate seniority list shall be set up for the Extra drivers. All classes of employees shall receive the scale provided in this contract.

[fol. 244] Section 2. *Regular Extra and Extra Drivers* The Employer agrees that regular extra and Extra drivers shall not exceed 10% of regular drivers, and that no Extra drivers will be hired when there are available drivers on the Regular seniority list who are not working.

Section 3. All regular drivers and regular relief drivers shall be guaranteed a full days pay when asked to report for work or are sent out. Regular Extra and Extra drivers shall be guaranteed a half days pay when asked to report for work or are sent out. Drivers may be required to stand by ½ of their guaranteed time. (This Section also applies to Dispatchers).

Section 4. Time of all classes of drivers shall start from the time they are due to report. A time clock shall

be installed in the garage or drivers room and all drivers must stamp their time out and in on each shift.

## ARTICLE V
### Drivers Wages

Section 1. Driver employees shall be guaranteed $11.00 per shift or 47% of their gross weekly take in, whichever is greater.

Section 2. *Overtime*

All overtime shall be time and one half the regular hourly scale. (See optional 6th day)

## ARTICLE VI
### Drivers hours

Section 1. Driver employees covered by this agreement shall work 5 consecutive 8½ hour days (exclusive of ½ hour for meal period) or 42½ hours per week. (See optional 6th day).

Section 2. All work performed on the 6th consecutive day shall be paid overtime, (see optional 6th day) and under no circumstance shall any driver be permitted to work the 7th consecutive day.

Section 3. There shall be no overtime work except at the request of the employer and shall be optional with the employee.

Section 4. The work week shall be computed from Sunday A. M. to Saturday P. M. for all employees.

Section 5. *Optional Sixth Day.*

This Agreement calls for a 5 consecutive day work week, but those employees who signify that they desire to work the 6th day at straight time may do so. Working the 6th day at straight time shall be completely optional with the employees.

## ARTICLE VII

### Dispatchers Wages & Hours

Section 1. Telephone operators—
First 60 days $11.20 per day.
Second 60 days $12.20 per day.
After 120 days $13.20 per day.
After 6 months $15.00 per day.

Radio Dispatchers—
First year $16.70 per day.
Second year $17.70 per day.
Third year $18.70 per day.
Fourth year $19.70 per day.
After 5 years $20.00 per day.

The Employer agrees that newly hired journeymen dispatchers shall be paid the wage scale called for according to his accumulated time as a dispatcher.

Section 2. All time over 8 hours per day or 40 hours per week shall be paid at the rate of time and one half. (See optional 6th day).

Section 3. Radio dispatchers of 35 or more units to be relieved of all supervisory or other duties.

Section 4. Any company operating 35 or more units must have at least two radio dispatchers on duty. Said dispatchers may alternate on phones.

[fol. 245]

## ARTICLE VIII

### Vacations

Section 1. The Employer agrees that after one full years employment by the same employer, driver employees covered by this agreement shall be entitled to one weeks vacation with pay of $65.00. After he earns his first weeks vacation he shall be entitled to $5.50 per month vacation pay if his employment is terminated before his next vacation period. After 3 full years of employment each driver shall be entitled to 2 weeks vacation with $120.00 pay. After he earns his first 2 weeks vacation he shall be entitled to $10.00 per month vacation pay if his employment is terminated before his next vacation period.

This section covers driver employees and shall apply to all other employees covered by this contract on the basis of the individual scale they are working under.

## ARTICLE IX
### Health and Welfare

Section 1. All employees who qualify shall be covered by the Washington Teamsters Welfare Trust. Unavoidable time loss by employees shall not apply to Section 1. New employees on application or withdrawal card shall not be entitled to Health & Welfare coverage until they have qualified by working 6 consecutive months of 80 hours or more each month. New employees who are already covered by the Teamsters Health & Welfare plan at the time of employment shall qualify the first month of 80 hours worked.

Section 2. The parties to this agreement hereby agree to a new level of Health & Welfare benefits based on the Millimum & Robertson Report, with the Employer agreeing to make contributions, therefore, up to a maximum of $15.50 as set by the Trustees of the Washington Teamsters Welfare Trust effective January 1, 1959. Administration to be as now set up under the consolidated Trusts.

Section 3. It is further agreed that the Employer will pay ten dollars and forty cents ($10.40) per month, or, upon prior notice, such other monthly sums as may be set forth by the Trustees of the Washington Teamsters Welfare Trust to maintain the present level of Health & Welfare benefits until January 1, 1959.

Section 4. The above payments shall be made to the Administrative Office by the tenth (10th) day of each month. In the event the Trust Fund is required to take legal action to collect any Employer's contribution due under this agreement, that Employer shall be liable for all necessary costs and expenses of the litigation including reasonable attorney fees. Failure to make all payments herein provided for, within the time specified, shall be a breach of this agreement.

## ARTICLE X
### Pension

Section 1. Beginning the date of signing and during the continuance of this collective bargaining agreement, the Employer agrees to pay into the Western conference of Teamsters Pension Trust Fund on account of each employee the following amounts which are to be computed monthly: 80¢ per shift for each employee.

Section 2. The total amount due for each calendar month shall be remitted in a lump sum not later than 10 days after the last business day of such month. The Employer agrees to abide by such rules as may be established by the trustees of said trust fund to facilitate the determination of the contributions due, the prompt and orderly collection of such amounts, and the accurate reporting and recording of such amounts paid on account of each member of the Bargaining unit. In the event the Trust Fund is required to take legal action to collect any Employer's contribution due under this agreement, that Employer shall be liable for all necessary costs and expenses of the litigation including reasonable attorney fees. Failure to make all payments herein provided for, within the time specified, shall be a breach of this agreement.

## ARTICLE XI
### Selling or Leasing

Section 1. The Employer agrees that he will not sell a portion of his equipment or business to a driver or drivers, and he shall not lease or rent any vehicle permit to a driver or drivers, and no Employer shall demand any guarantee of money from any driver for any shift.

[fol. 246] Section 2. *Job Lists*

On or before the 10th day of each month, if the Union requests it, the Employer agrees to send to the Union a seniority list of all employees covered by this Agreement. Steadily employed employees and extra employees shall be designated on such lists.

Section 3. *Fares*

Employees shall not be responsible or liable for any passenger's refusal or inability to pay fare provided such passenger shall be turned over to the Police Department or an official of the Company. Employees will be expected to use good judgment in such matters.

Section 4. *Loss of Money*

In those cases where proper evidence is submitted that a loss of the Employer's money or property has resulted from robbery, the employee shall not be responsible or liable for the same.

Section 5. In any case where employees appear in court in behalf of the Employer, the employees shall be paid their regular wages for the time spent in the Employer's behalf.

Section 6. *Union Agreement*

The Employer agrees to list this union agreement as an asset on his books and records. In the event that the employer should sell or lease his business during the life of this Agreement, he further agrees to require the purchaser or leasee to assume and abide by this Union Agreement.

Section 7. The Union is not in favor of sympathetic strikes and will make every effort to avoid them. The employer shall not insist on employees going through a legitimate picket line which has been approved by Joint Council #28.

Section 8. *Legality*

If any Article or portion of any Article of this Agreement is declared unconstitutional by Law, such Article or portion of such Article shall have no effect whatsoever on the balance of this Contract.

Section 9. *War Clause*

In the event of War, declaration of emergency, imposition of civilian wage controls by the U.S. Government during the life of this Contract, either party may reopen the same upon thirty (30) days' written notice and request renegotiation of matters dealing with wages and hours.

Upon the failure of the parties to agree in such negotiations, either party shall be permitted all lawful economic recourse to support their request for revisions. If governmental approval of revision should become necessary, all parties will cooperate to the utmost to attain such approval. The parties agree that the notice provided herein shall be accepted by all parties as compliance with the notice requirements of applicable law so as to permit economic action at the expiration thereof.

## ARTICLE XII

This Agreement shall remain in effect until June 1, 1959, and shall continue yearly unless canceled or amended. It is agreed that this Contract may be opened by a majority of the License holders in the City of Seattle or by Local Union 465 for the adjustment of wages and conditions by either party's giving sixty (60) days' written notice prior to June 1, 1959. On June 1, 1959, or any subsequent year that either party wishes to open this contract they shall specify in writing what changes are to be negotiated sixty (60) days prior to June 1 in the year they desire to open the contract.

In the event that the negotiations extend beyond the expiration date, then the revised agreement when executed shall be retroactive to the expiration date of the last agreement.

Dated at Seattle, Washington, this ..... day of .....
....., 1958.

| Company | Local Union No. 465 |
|---|---|
| By ..... | By ..... |
| By ..... | By ..... |

[fol. 247]

#2 Bernard Yellow Cab, Inc.
by JUNE R. SCHMITZ, President

#3 M & A Yellow Cab, Inc.
by ....., President

#4 Burdick Yellow Cab, Inc.
by ....., President

#5 Hopper Yellow Cab, Inc.
by ....., President

#6 Town Yellow Cab, Inc.
by ....., President

#8 Curtis Yellow Cab, Inc.
by ....., President

#9 Heins Yellow Cab, Inc.
by ....., President

#10 C & S Yellow Cab, Inc.
by O. C. COREY, President

#11 G & C Yellow Cab, Inc.
by ....., President

#12 Ayers Yellow Cab, Inc.
by ....., President

#14 KJ Yellow Cab, Inc.
by ....., President

#15 Neider Yellow Cab, Inc.
by ....., President

#17 The Friendly Yellow Cab, Inc.
by ....., President

#19 Emch Yellow Cab, Inc.
by ....., President

#20 Ervin Dale Yellow Cab, Inc.
by ....., President

#21 Theljo Yellow Cab, Inc.
by ....., President

#22 M & F Yellow Cab, Inc.
by ....., President

#23 Barney Yellow Cab, Inc.
by ....., President

#24 Curry Yellow Cab, Inc.
by ....., President

#25 Puget Yellow Cab, Inc.
by ....., President

#31 MRI Yellow Cab, Inc.
by WILBUR R. KIRCHNER, President

#32 P & G Yellow Cab, Inc.
by WALTER R. WEBER, President

#33 Stadium Yellow Cab, Inc.
by ....., President

#34 Wall Yellow Cab, Inc.
by ....., President

#35 Smith Yellow Cab, Inc.
by ....., President

#36 Murray Yellow Cab, Inc.
by ....., President

[fol. 248]

#37 Art's Yellow Cab, Inc.
by ....., President

#38 Schroeppel Yellow Cab, Inc.
by ....., President

#39 Quinn Yellow Cab, Inc.
by HENRY NEUBARTH, President

#41 Stan Burrell Yellow Cab, Inc.
by ....., President

#43 Western Yellow Cab, Inc.
by ....., President

#44 Fisher Yellow Cab, Inc.
by ROY C. FISHER, President

#45 Wilson Yellow Cab, Inc.
by ....., President

#46 Rag Yellow Cab, Inc.
by ....., President

#47 Sound Yellow Cab, Inc.
by ....., President

#48 Marquinn Yellow Cab, Inc.
by DONALD QUINN, President

#49 Gimness Yellow Cab, Inc.
by ....., President

#50 Alyea Yellow Cab, Inc.
by ....., President

#51 Plan Yellow Cab, Inc.
by ....., President

#52 The Rainier Yellow Cab, Inc.
by H. L. HAUSON, President

#53 WRR Yellow Cab, Inc.
by ....., President

#54 Jones Yellow Cab, Inc.
by ....., President

#55 Winton Yellow Cab, Inc.
by ....., President

#56 Connor Yellow Cab, Inc.
by ....., President

#58 Nutter Yellow Cab, Inc.
by ....., President

#59 Lee Yellow Cab, Inc.
by ....., President

#60 Haney Yellow Cab, Inc.
by ....., President

#61 Kay Yellow Cab, Inc.
by WILBUR R. KIRCHNER, President

#62 B & H. Yellow Cab, Inc.
by (Illegible), President

#65 Ferry Yellow Cab, Inc.
by ....., President

#66 Gwendolyn E. Levy Yellow Cab, Inc.
by ....., President

#67 Anacker Yellow Cab, Inc.
by ....., President

[fol. 249]

#70 Shaw Yellow Cab, Inc.
by W. B. SEDAM, President

#71 Chiaramonte Yellow Cab, Inc.
by ....., President

#72 Levy Yellow Cab, Inc.
by WILBUR R. KIRCHNER, President

#74 Jay Scott Yellow Cab, Inc.
by ....., President

#75 Laycock Yellow Cab, Inc.
by ....., President

#76 Independent Yellow Cab, Inc.
by ....., President

#77 Hawkins Yellow Cab, Inc.
by ....., President

#78 Haight Yellow Cab, Inc.
by ....., President

#79 Sunset Yellow Cab, Inc.
by ....., President

#80 Matson Yellow Cab, Inc.
by ....., President

#81 L. C. Matson Yellow Cab, Inc.
by ....., President

#82 Rhodes Yellow Cab, Inc.
by ....., President

#83 Bill's Yellow Cab, Inc.
by ....., President

#84 Paul & Charl Curry Yellow Cab, Inc.
by ....., President

#85 Bank Yellow Cab, Inc.
by ....., President

#86 Gannon Yellow Cab, Inc.
by ....., President

#87 C. B. Yellow Cab, Inc.
by CHARLES H. CARTER, President

#88 Gustafson Yellow Cab, Inc.
by ....., President

#89 LB Yellow Cab, Inc.
by ....., President

#90 Russell Yellow Cab, Inc.
by ....., President

#91
#92 WT Yellow Cab, Inc.
by ....., President

#93
#94 LKP Yellow Cab, Inc.
by ....., President

#95 H & C Yellow Cab, Inc.
by ....., President

#96 C & H Yellow Cab, Inc.
by ....., President

#97 DLA Yellow Cab, Inc.
by DONALD L. ANDERSON, President

#98 Holland Yellow Cab, Inc.
by ....., President

[fol. 250]

#99 Karsib Yellow Cab, Inc.
by JOHN WUNRA, President

#100 D & H Yellow Cab, Inc.
by ....., President

#101 D & Q Yellow Cab, Inc.
by ....., President

#103 L & L Yellow Cab, Inc.
by ....., President

#104 Dawson Yellow Cab, Inc.
by ....., President

#105 Jerry Scott Yellow Cab, Inc.
by ....., President

#107 Vasser Yellow Cab, Inc.
by ....., President

#108 WBS Yellow Cab, Inc.
by W. B. SEDAM, President

#109 Sedam Yellow Cab, Inc.
by W. B. SEDAM, President

#110 Swadley Yellow Cab, Inc.
by ....., President

#111 Amco Yellow Cab, Inc.
by ....., President

#112 Doug's Yellow Cab, Inc.
by ....., President

#114 BJL Yellow Cab, Inc.
by ....., President

#115 E. Ehrenberg Yellow Cab, Inc.
by ....., President

#116 Queen City Yellow Cab, Inc.
by ....., President

#117 Lyons Yellow Cab, Inc.
by ....., President

#118 Dailey Yellow Cab, Inc.
by ....., President

#119 Had Yellow Cab, Inc.
by ....., President

#120 Jack Yellow Cab, Inc.
by ....., President

#121 Red's Yellow Cab, Inc.
by ....., President

#122 Lyle Yellow Cab, Inc.
by JAY H. DOUTHITT, President

#123 Martin Yellow Cab, Inc.
by ....., President

#124 B & Q Yellow Cab, Inc.
by ....., President

#125 Johnston Yellow Cab, Inc.
by ....., President

#126 Glass Yellow Cab, Inc.
by ....., President

#127 Searight Yellow Cab, Inc.
by ....., President

#128 Lav-Lar Yellow Cab, Inc.
by GENE WILLARD SCOTT, President

#129 Peck Yellow Cab, Inc.
by ....., President

#130 Sam Yellow Cab, Inc.
by ....., President

#131 Lake Yellow Cab, Inc.
by ....., President

#134 Darling Yellow Cab, Inc.
by ....., President

#135 DYC Yellow Cab, Inc.
by ....., President

#136 Cec's Yellow Cab, Inc.
by ....., President

#138 Atwell Yellow Cab, Inc.
by ....., President

#139 Blake Yellow Cab, Inc.
by ....., President

#163 Moore Yellow Cab, Inc.
by ....., President

#164 Croft Yellow Cab, Inc.
by ....., President

#165 Camel Yellow Cab, Inc.
by ....., President

#166 Court Yellow Cab, Inc.
by ....., President

#168 WHC Yellow Cab, Inc.
by ....., President

Yellow Cab Service, Inc.
(For its Dispatchers only)
by A. H. WENCK, President

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[fol. 252] DEFENDANTS' EXHIBIT 40

(Letterhead of Taxicab Drivers and Chauffeurs Local Union No. 465, of 552 Denny Way, Seattle 9.)

October 6, 1958

Warren R. Slemmons
15th Floor, Hoge Building
Seattle, Washington

Dear Mr. Slemmons:

I have received your letter of October 3, 1958 together with the enclosures.

Please be advised that Local 465 will not enter into a separate contract with Yellow Cab Service, Inc. and Nineteen of the purchasing corporations. First of all, the signing of the standard form of agreement will not settle our present dispute with the Yellow Cab enterprise. As you know, from your participation in the negotiating sessions, we still have unresolved several grievances which arose under our old contract, including the payment of pension premiums on the drivers. Also unresolved is the matter of procedure which will be used to resolve day to day

grievances under the new contract, and the part that Yellow Cab Service, Inc., will play in the settlement of these disputes. Secondly, Local 465 will not be put in the position of signing an agreement with only part of the Yellow Cab enterprise. If we should agree to negotiate with Yellow Cab Service, Inc. and each purchasing corporation separately, it would mean the destruction of the Union. Such traditional concepts as seniority and union security would be meaningless. The only practical and effective way to negotiate and administor a collective bargaining contract with the Yellow Cab enterprise is to insist that Yellow Cab Service, Inc. and the purchasing corporations act as a group. This is the way we have negotiated in the past and, up until the time the present law suit was initiated, this is the way we were negotiating this year. This is also the way we have negotiated collective bargaining contracts with the rest of the Seattle Taxi Cab Industry. You will be interested in knowing that at the special membership meeting of Local Union 465 held on Monday, September 22nd that it was moved and seconded that the Negotiating Committee be instructed to conform to the procedure already established and to "sign only master contracts" with Taxicab fleet operations; this motion carried unanimously.

If Yellow Cab Service Inc. and the purchasing Corporations wish to resume negotiations in an effort to resolve this dispute, Local 465 is most willing to cooperate. It is difficult however, to negotiate freely when you have placed our dispute in the Superior Court for King County. We suggest that Yellow Cab Service Inc. dismiss the law suit and that, thereupon, negotiations be resumed, preferably under the auspices of the Federal Mediation and Conciliation Service.

I am returning the contract which was enclosed with your letter.

Very truly yours,

/s/ GEORGE LANCASTER
George Lancaster
Secretary-Treasurer
Local Union No. 465

GL/oc
Encl.

[fol. 253]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 25, 1959.

WILLIAM O. DOUGLAS
Associate Justice of the Supreme Court of the United States.

Dated this 11th day of May, 1959.

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[fol. 254]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—June 29, 1959

The petition herein for a writ of certiorari to the Supreme Court of the State of Washington is granted, and case transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office-Supreme Court, U.S.
FILED
MAY 25 1959
JAMES R. BROWNING, Clerk

No. [redacted] 76

**In the**

# Supreme Court of the United States

OCTOBER TERM, 1958

---

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, the HONORABLE LLOYD SHORETT, Judge; and TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 465, and GEORGE LANCASTER, its Secretary-Treasurer, *Petitioners,*

vs.

THE STATE OF WASHINGTON on the Relation of Yellow Cab Service, Inc., a corporation, *Respondent.*

---

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

---

SAMUEL B. BASSETT
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Seattle 4, Washington
*Counsel for Petitioners.*

*Of Counsel:*
RICHARD P. DONALDSON
811 Alaska Building
Seattle 4, Washington.

THE ARGUS PRESS, SEATTLE

No.....

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# Supreme Court of the United States

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SAMUEL B. BASSETT
811 Alaska Building
Seattle 4, Washington
*Counsel for Petitioners.*

*Of Counsel:*
RICHARD P. DONALDSON
811 Alaska Building
Seattle 4, Washington.


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THE ARGUS PRESS, SEATTLE

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In the

# Supreme Court of the United States

| | |
|---|---|
| THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, the HONORABLE LLOYD SHORETT, Judge; and TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 465, and GEORGE LANCASTER, its Secretary-Treasurer, *Petitioners,* | No. ..... |
| vs. | |
| THE STATE OF WASHINGTON on the Relation of Yellow Cab Service, Inc., a corporation, *Respondent.* | |

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Washington entered in the above-entitled case on February 10, 1959.

## CITATIONS TO OPINIONS BELOW

The oral opinion of the Superior Court for King County, Washington, is unreported, but is included in the certified statement of facts (St. 227-232).[1] The opinion of the Supreme Court of Washington is re-

[1] The record certified to this court by the clerk of the court below consists of a "Statement of Facts" (the official transcript of proceedings in the trial court); a "Transcript on Petition for Writ of Certiorari" (consisting of various pleadings, papers and documents in the case) and the original exhibits. In this petition, references to the Statement (St.) are references to the "Statement of Facts"; references to the Transcript (Tr.) are references to the "Transcript on Petition for Writ of Certiorari"; and references to the Exhibits (Plt. Ex. or Def. Ex.) are references to the original exhibits.

ported at 153 Wash. Dec. 358, 333 P.2d 924 (1959), and is included in the certified transcript (Tr. 82-91) and in Appendix A, *infra*, pp. 39-48.

## JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. Section 1257 (3), since rights, privileges and immunities specially set up and claimed under the statutes of the United States have been denied.

On February 10, 1959, the Supreme Court of Washington entered a judgment granting a writ of mandate compelling the Superior Court for King County, the Honorable Lloyd Shorett, judge, to assume jurisdiction over a cause of action brought by Yellow Cab Service, Inc., a Washington corporation, against Taxicab Drivers and Chauffeurs Local Union No. 465, and George Lancaster, its secretary-treasurer, seeking an injunction restraining Local 465 from picketing the premises of the corporation (Tr. 92-93; Appendix A, *infra* pp. 49-50). By order of Associate Justice William O. Douglas, the time for filing this petition was extended to and including May 25, 1959.

## STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are those included in the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. Secs. 141-187. Pertinent sections of the Act are reproduced in Appendix B, *infra*, pp. 51-55.

## QUESTIONS PRESENTED

Does the National Labor Relations Board have jurisdiction over a strike, and peaceful picketing incident

thereto, called by a labor union against a taxicab company which does not operate across state lines but which does an annual gross business of $1,429,914.02; which possesses franchises by which it is granted exclusive rights to pick up passengers at certain railroad, airline and steamship terminals serving interstate carriers of passengers and baggage, and from the exercise of which franchises it receives annual revenue in excess of $156,062.40; and which is party to agreements with certain railroads by which it agrees to transfer passengers, traveling on "through" tickets, from the railroad terminals to the steamship docks, or vice-versa, and from the exercise of which agreements it receives an annual revenue of $1,436.55?

The court below answered this question in the negative.

## STATEMENT OF THE CASE

### 1. The Seattle Yellow Cab Enterprise

#### a. Sale of taxicabs by the Yellow Cab Company, a partnership, to 118 purchasing corporations

Prior to 1955 and 1956, the Yellow Cab Company, a partnership, operated a fleet of more than 120 taxicabs in the city of Seattle, Washington. The drivers and dispatchers employed by the company to operate and dispatch these taxicabs were members of Taxicab Drivers and Chauffeurs Local Union No. 465, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the company entered into collective bargaining contracts with this union providing wages, hours and conditions of employment for these drivers and dispatchers (St. 4-5, 8, 67).

In 1955 and 1956, however, the Yellow Cab Company undertook to liquidate its assets by selling all of its taxicabs, individually, to taxicab drivers and others who were interested (St. 5-6). These sales were accomplished in the following manner:

The Yellow Cab Company first organized Yellow Cab Service, Inc., a Washington corporation, and then sold to this corporation the service facilities and equipment, other than taxicabs, used by it in conducting a taxicab business, including the lease on the company garage and office facilities, the radio and telephone dispatching equipment, the shop and repair equipment, etc. (St. 23-24).

The Company then solicited buyers for the taxicabs and when willing buyers were obtained, it required these buyers, or purchasers, to incorporate under the laws of the State of Washington and, further, to execute a certain "conditional sales contract" and also a certain "agreement."

Pursuant to the terms of the "conditional sales contract" each purchasing corporation was sold a taxicab, a meter, a radio, a city permit, and four shares of Series 2 common stock in Yellow Cab Service, Inc. The contract provides that said property was to remain the absolute property of the Yellow Cab Company until the payment in full of the purchase price. Upon payment in full of the purchase price, title would then vest in the purchasing corporation subject, however, "to the terms and conditions of an agreement of even date herewith entered into between the parties hereto and Yellow Cab Service, Inc., a Washington corpora-

tion." The contract further provides that should the purchasing corporation breach any of the provisions of said agreement then the Yellow Cab Company can repossess the property conveyed (Tr. 10-11, 26-27; St. 6; Def. Ex. 2).

At the same time that each purchasing corporation executed the "conditional sales contract" described in the preceding paragraph, it also executed a certain "agreement" between the purchasing corporation on the one hand, and the Yellow Cab Company and Yellow Cab Service, Inc., on the other. This agreement provides that the Yellow Cab Company will retain the controlling shares in Yellow Cab Service, Inc., until all the purchasing corporations make all the payments required under all of the conditional sales contracts, at which time such shares will be assigned and transferred to Yellow Cab Service, Inc. This agreement further provides that the purchasing corporation agree to "conform to, and be bound by, uniform rules and regulations" adopted by the board of directors of Yellow Cab Service, Inc., covering "among other things, but without limitation, rules and regulations relating to the dispatch and traffic control of cabs, the use of taxi stands, the servicing of transportation accounts, display of advertising, and maintenance and care of the operator's taxicab." It also provides that the purchasing corporation agrees to "conform to and be bound by the union contract provisions relating to the operation of taxicabs in the City of Seattle" (Tr. 10-11, 26-27; Def. Ex. 3).

Upon the execution of the "conditional sales contract" and the "agreement," each purchasing corpora-

tion pledged its four shares of Series 2 common stock in Yellow Cab Service, Inc., to the Yellow Cab Company as security guaranteeing its performance of the terms and conditions of the "conditional sales contract." At the same time, and for the same purpose, the president of each purchasing corporation personally pledged a number of shares in his corporation to the Yellow Cab Company (St. 102, 111, 125; Def. Ex. 37).

During the years 1955 and 1956, the Yellow Cab Company, pursuant to the methods and contracts described above, sold some 120 taxicabs to some 118 purchasing corporations. At the time of the trial of this case none of the purchasing corporations had completed the payments required of it under the "conditional sales contract." In several instances the purchasing corporations could not make the payments required and the taxicabs were repossessed by the Yellow Cab Company and resold to other purchasing corporations (St. 5-6, 64-65, 103, 109-110).

**b. The 118 purchasing corporations and Yellow Cab Service, Inc., conduct an integrated taxicab business**

Although the taxicabs formerly operated by the Yellow Cab Company are now being operated by some 118 purchasing corporations, these corporations, together with Yellow Cab Service, Inc., continue to run an integrated taxicab business in the City of Seattle. Yellow Cab Service, Inc., is hereafter referred to as "the service corporation."

All taxicabs are painted the "Yellow" color pursuant to color rights granted to the purchasing corporations by the service corporation, and all carry advertising for

the Standard Oil Company, the revenue from which is paid to the service corporation. The individual license or permit issued for each taxicab by the city of Seattle is issued jointly in the name of the purchasing corporation involved and the service corporation (Tr. 3, 8; St. 107).

All the taxicabs are centrally dispatched through the telephone and radio dispatching facilities operated by the service corporation in the garage and office which it leases at 902 Madison Street, Seattle. Generally, shifts begin and end at this garage, and the taxicabs are stored there when not in use (St. 23, 25, 27; Def. Ex. 13, 16, 20, 22).

The service corporation employs approximately 10 employees who operate the radio and telephone equipment used in dispatching the taxicabs. These dispatchers are members of Taxicab Drivers and Chauffeurs Local Union No. 465. The service corporation also employs "traffic men" who investigate accidents in which Yellow taxicabs are involved and who act as starters at the train depots and other places where Yellow taxicabs accumulate, and it employs office and clerical employees who do the bookkeeping, accounting and payroll work for the service corporation and the 118 purchasing corporations (Tr. 3, 9; St. 23-25, 27-28, 42, 143-144).

The 120 taxicabs operated by the 118 purchasing corporations are usually driven by the presidents of the respective purchasing corporations (hereafter called the "owners") and by employees specifically employed for that purpose (hereafter called the "employee-drivers"). The employee-drivers are members of Taxicab

Drivers and Chauffeurs Local Union No. 465 (Tr. 2, 8, 20; St. 143, 198, 205).[2]

One of the employees of the service corporation is designated as "personnel manager." By action of the 118 purchasing corporations this "personnel manager" has been vested with authority to hire, fire and discipline the employee-drivers and to assign them to shifts on various taxicabs being operated by the various purchasing corporations, as well as assign these employees their days off, emergency leaves and vacations, and this authority has been extensively exercised by the "personnel manager." There is a considerable interchange of employees from taxicab to taxicab, which is done upon the assignment of the "personnel manager." Personnel records relating to all employee-drivers are maintained by the "personnel manager" (St. 42, 46-48, 133, 135, 137, 143, 147-148; Def. Ex. 22, 42).

At the end of each shift the driver of each taxicab, whether he be an employee-driver or an owner, is required to turn the gross proceeds from that shift (known as the "turn") over to the office cashier working for the service corporation. These funds are then credited to the account of the purchasing corporation operating the particular cab. From these funds, the service corporation deducts and pays (1) the wages due to the employee-drivers; (2) the payments due for Social Security, Workmen's Compensation, Unemployment Compensation and Health and Welfare cover-

[2]Testimony in the case did not reveal the actual number of drivers working for the purchasing corporations but union records available to counsel for the petitioners indicate that, at the time of the strike in September, 1958, there were approximately 150 so employed.

ages; (3) the automobile insurance premiums; (4) the payments due under the conditional sales contract; and (5) the service charges due to service corporation (known as the "nut"). The amount remaining is paid to the owners. Checks are issued to the owners and to the employee-drivers once a week. The paychecks issued to the employee-drivers list the service corporation as the payor (St. 24-26, 148, 152, 160-162, 169-170, 200, 203; Def. Ex. 43, 44; Plt. Ex. 46).

There is one blanket policy of fire, theft and liability insurance covering all the taxicabs. The service corporation assists the purchasing corporations in negotiating for this insurance coverage and deducts the insurance premiums from the daily "turn" and pays said premiums directly to the insurance company. Owners who have too many accidents may have their cabs repossessed and resold to someone else (Tr. 2, 8; St. 25-27, 42-43; Def. Ex. 20).

The service corporation has a five-man board of directors, three of whom represent the Yellow Cab Company and two of whom represent the purchasing corporations. This board of directors meets regularly for the purpose of discussing matters of common interest, including the adoption of rules and regulations relating to "the dispatch and traffic control of cabs, the use of taxi stands, the servicing of transportation accounts, display of advertising and the maintenance and care of the individual taxicabs." (Tr. 23; St. 40-41, 83-85; Def. Ex. 17, 19, 20, 30).

The owners hold periodic meetings at which times they have adopted uniform rules and regulations for

the conduct of their joint business, including the procedure to be followed by the "personnel manager" in the hiring, firing, disciplining and assigning of employee-drivers. The owners have also elected an owner's committee to act for the entire group of owners in the interval between owners' meetings. Two of the directors of the service corporation are members of this owners' committee. The president of service corporation has attended meetings of the owners' committee and given advice to that committee (St. 32, 36-37, 43, 84, 153; Def. Ex. 14, 16, 22).

Once a week the service corporation issues the "Yellow Cab Service, Inc., Bulletin" over the signature of the president of that corporation. This bulletin is published as a house organ and is distributed to all owners and employee-drivers. It contains the "operating procedure" and "rules and regulations" adopted at the owners' meetings, as well as announcements and directives from the service corporation (St. 28, 31, 133-134; Def. Ex. 6 through 23).

All of the taxicabs operate largely in Seattle and King County. None of them operate across state lines (St. 57-58).

**c. Revenue received by the Seattle Yellow Cab enterprise and franchises held by it**

During the year from July 1, 1957 through June 30, 1958, the 120 Yellow taxicabs operated by the 118 purchasing corporations earned a gross revenue of $1,429,914.02 (St. 50; Def. Ex. 24).

The service corporation owns franchises or conces-

sion agreements by which Yellow taxicabs are given exclusive rights to pick up passengers at the following railroad, air line and steamship terminals in Seattle, which terminals service interstate carriers of passengers and baggage: King Street Railroad Station; the Union Railroad Station; the King County Airport (also known as Boeing Field); the Seattle-Tacoma International Airport (also known as Bow Lake Field), and the Canadian Pacific Railroad Dock. In addition Yellow taxicabs deliver passengers to these terminals, although such services are not pursuant to exclusive franchises or concessions (Tr. 13, 29; St. 14-18; Def. Ex. 5, 19).

Copies of the franchise or concession agreements between the service corporation and the airports and the Canadian Pacific Railway Dock were not available (St. 15-18). However, a copy of the agreement between the service corporation and the Northern Pacific Railway and the Great Northern Railway, joint operators of the King Street Railroad Station, provides, in part, as follows:

"III.

"The Railroad Companies in order to care for their incoming passengers desire to have at the King Street Station at all times when trains arrive a sufficient number of taxicabs in charge of sober and courteous drivers to serve incoming passengers. The Railway Companies . . . do therefore grant to the Cab Company the exclusive right to occupy with taxicabs the space belonging to the Railway Companies situate adjacent to Third Avenue South alongside said King Street Station as shown

enclosed in red lines on the map hereto attached and made a part of this agreement.

"IV.

"The Cab Company agrees to furnish and keep in attendance at said station during the hours when trains arrive a sufficient number of taxicabs in charge of sober and courteous drivers to serve incoming passengers, and agrees that passengers shall be transported to and from said station at reasonable rates, not to exceed those fixed by ordinance of the City of Seattle.

"V.

"The Cab Company agrees to remove from its service at that point any driver who for any reason is unsatisfactory to the Superintendent of the King Street Station upon being requested to do so by said Superintendent." (Def. Ex. 5).

There exists a similar agreement with the Union Pacific Railroad covering the Union Railroad Station (St. 16).

No figures are available showing the amount of revenue earned by Yellow taxicabs from taking passengers to and from the railroad stations and the steamship dock (St. 55). Company records show, however, that during the year from July 1, 1957, through June 30, 1958, Yellow taxicabs earned a gross revenue of $156,062.40 from picking up passengers at the King County Airport and the Seattle-Tacoma International Airport, pursuant to the franchise or concession agreements. During this same period these taxicabs earned an additional gross revenue of $46,818.00 from delivering passengers to these airports (St. 52-56, Def. Ex. 24).

The service corporation also holds agreements with the railroads operating out of the King Street Station and the Union Station by the terms of which Yellow taxicabs are exclusively utilized by said railroads to transfer through-passengers and baggage between said stations and the Canadian Pacific Railroad Dock, and vice-versa. During the year from July 1, 1957 through June 30, 1958, the Yellow taxicabs earned a gross revenue of $1,436.00 from furnishing such transfer services (St. 14-16, 19-21, 51-52; Def. Ex. 4, 24).

**2. The Strike of Taxicab Drivers and Chauffeurs Local Union No. 465 Against the Seattle Yellow Cab Enterprise**

At the time the taxicabs were sold to the purchasing corporations the Yellow Cab Company and Taxicab Drivers and Chauffeurs Union Local No. 465 were parties to a collective bargaining agreement covering the drivers and dispatchers employed by the Company. In June, 1956, after the sale of the taxicabs, this contract expired. Subsequently, the purchasing corporations appointed a committee of owners, and this committee, together with representatives of the service corporation, negotiated a new collective bargaining agreement with Local 465 covering the employee-drivers and dispatchers. Each purchasing corporation, and the service corporation, signed this agreement. By its terms, this agreement ran from August 1, 1956 to June 1, 1958, and from year to year thereafter unless amended or cancelled, and it provided that either party could open the contract by giving sixty days notice to the other party. On March 26, 1958, the service corporation and the 118 purchasing corporations terminated this agreement and notified Local 465 that they were willing to

negotiate the provisions of a new agreement (Tr. 12, 27; St. 8-11, 77, 79-80, 126-127, 172-174, 180, 205; Def. Ex. 1; Plt. Ex. 27).

During the ensuing months, representatives of Local 465 met and corresponded with representatives of the purchasing corporations and the service corporation in an attempt to arrive at mutually satisfactory terms for a new contract covering drivers and dispatchers. As one of the conditions for agreeing to a new contract, Local 465 requested that the purchasing corporations and the service corporation settle with the Local several pending grievances which arose during the life of the prior contract, including the failure of the service corporation to pay over to the trustees of a pension fund the sum of approximately $60,000.00 in pension premiums on employee-drivers, required by the terms of the prior contract. Another request of Local 465 was that it have some assurance that the service corporation, through its officers or employees, would participate in the settling of any grievances which arose during the life of the new contract. However, the negotiations between the parties were unsuccessful and on September 16, 1958 the Local called a strike against the purchasing corporations and the service corporation and as an incident thereto caused two pickets to peacefully patrol the garage and office at 902 Madison Street, Seattle. The pickets carried signs reading

"YELLOW CABS
are
UNFAIR
to
TAXICAB DRIVERS LOCAL
UNION NO. 465."

On September 17 and again on September 18, 1958, the Federal Mediation and Conciliation Service requested the parties to meet with a representative of said service in an effort to resolve the differences between the parties so that the strike could be terminated. Two meetings were held but no agreement was reached and the strike and picketing continued (Tr. 12-13, 27-28; St. 81-82, 96-100, 117-123, 175, 177-178, 183-188, 191-192; Def. Ex. 31, 32, 33, 47 and 48).

### 3. Proceedings in the Trial Court

On September 23, 1958, Yellow Cab Service, Inc., brought an action in the Superior Court for King County, Washington, against Local Union 465, George Lancaster, its secretary-treasurer, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, seeking a permanent injunction restraining defendant Local and defendant International from picketing its place of business at 902 Madison Street. The complaint alleged that plaintiff corporation was willing to sign a collective bargaining contract with defendant Local covering the dispatchers employed by said corporation, that no labor dispute existed between it and the defendant Local, that the picketing was therefore unlawful, and that it was causing plaintiff to suffer irreparable damage (Tr. 1-6). Contemporaneously with the filing of this complaint, plaintiff corporation also obtained an order requiring the defendants to appear and show cause why a temporary injunction should not issue in accordance with the allegations of the complaint, pending a trial on the merits of plaintiff's request for a permanent injunc-

tion (Tr. 7). Defendants Local 465 and George Lancaster answered the complaint alleging, *inter alia*, that the purchasing corporations and the plaintiff service corporation constituted a single business enterprise, that this enterprise was engaged in an industry "affecting commerce" within the meaning of the federal Labor Management Relations Act, 29 U.S.C. Sees. 141-187, that the activities of defendant Local 465 in striking and picketing were protected activities within the meaning of said Act, and that the Superior Court of King County had no jurisdiction over plaintiffs' action (Tr. 8-15).

On October 1, 7, 8 and 9, 1958, the defendants Local 465 and George Lancaster appeared before the Honorable Lloyd Shorett, one of the judges of the Superior Court for King County, to show cause why a temporary injunction should not issue (St. 1-227). The parties then stipulated that the hearing pursuant to the order to show cause was to be treated as a trial on the merits of plaintiff's request for a permanent injunction (St. 22-22a).

The defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America did not appear and plaintiff offered no proof that service of process had been had upon it (St. 1-227).

At the conclusion of the trial, the court orally ruled that the 118 purchasing corporations and the service corporation functioned as one business operation or enterprise; that activities of this enterprise affected interstate commerce; and that the National Labor Relations Board, and not the Superior Court for King

County, had jurisdiction to determine the lawfulness, or unlawfulness, of Local 465's conduct in striking and picketing (St. 227-232).

**4. Proceedings in the Supreme Court of Washington**

Immediately upon the trial court's ruling that it had no jurisdiction over plaintiff's cause of action, plaintiff service corporation filed, in the Supreme Court of Washington, an *ex parte* application for an alternative writ of mandate requiring the Superior Court for King County to assume jurisdiction of its application for an injunction, together with an affidavit in support thereof (Tr. 31-61). The court below granted the application and ordered the trial court to appear and show cause on November 13, 1958, why it should not take and assume jurisdiction over plaintiff's cause of action (Tr. 62-65).

The respondent trial court then filed a return and answer to the application for alternative writ of mandate (Tr. 66-81).

On November 13, 1958, the cause was heard by the court below, sitting *en banc*.

On January 8, 1959, the court below filed an opinion in which it held that the trial court was in error in holding that the jurisdiction of the case rested with the National Labor Relations Board. The court ruled that the activities of the purchasing corporations and the service corporation, considered as a single enterprise, do not fall within the scope of the National Labor Relations Act and are not subject to the jurisdiction of the

National Labor Relations Board (Tr. 82-91, Appendix A, *infra*, pp. 39-48).[3]

The court below stated the issue to be whether "Seattle's Yellow cab system is 'in (interstate) commerce.'" (Tr. 86, Appendix A, *infra*, pp. 42-43). The court acknowledged that the Seattle Yellow Cab enterprise did an annual gross business of $1,429,914.02, and that the National Labor Relations Board has announced that it will take jurisdiction over any taxicab business doing an annual gross business of $500,000, but, said the court, "the test is not the amount of gross volume of business, but whether the local transportation service in an integral part of interstate commerce" (Tr. 86; Appendix A, *infra*, p. 43).

Relying on *U.S. v. Yellow Cab Company*, 332 U.S. 218, 91 L.ed. 2010 (1947), a case arising under the Sherman Anti-Trust Act, and upon *Mateo v. Auto Rental Company* (9th Cir. 1957) 240 F.2d 831, a case arising under the Fair Labor Standards Act, the court held that the activities of a local taxicab company, even though it delivers passengers to and from the terminals of railroad stations and airlines, do not constitute "an integral part of interstate commerce." The court also cited the *Checker Cab Company* decision of the National Labor Relations Board, 110 NLRB 683 (1954), wherein the Board declined to assert jurisdiction over a local taxicab company (Tr. 87-89; Appendix A, *infra*, pp. 44-46).

[3]In the first paragraph of its opinion, the court states that the case involves an action against "The International Brotherhood of Teamsters." As noted previously, the International Brotherhood of Teamsters did not appear at the trial and plaintiff made no showing that service had been made upon it. The only defendants in the case were Taxicab Drivers and Chauffeurs Local Union No. 465 and George Lancaster, its secretary-treasurer.

The court also stated that the activities of the union in striking and picketing the Seattle Yellow Cab system could not be said to be "burdening or obstructing commerce" as there was no testimony in the record to the effect that the strike impaired taxicab service to or from the railroad terminals, airports and docks (Tr. 90; Appendix A, *infra*, p. 47).

The court indicated that perhaps the operation in which Yellow cabs carry through-passengers from the railroads to the steamship dock would constitute "interstate commerce" but noted that the revenue received from this operation was only one-tenth of one per cent of the annual gross revenue (Tr. 90, Appendix A, *infra*, p. 47). The court then concluded:

> ". . . we do not believe that Seattle's Yellow cab system constitutes such an integral step in the interstate movement of passenger traffic as to be considered as being in interstate commerce, nor that an unfair labor practices whether by the union or the Yellow Cab system burden or obstruct interstate commerce. For this reason the Superior Court was in error in holding that the jurisdiction of this case lies with the National Labor Relations Board" (Tr. 82-91; Appendix A, *infra*, p. 47).

On February 10, 1959, the Supreme Court of Washington entered its judgment in the matter, which judgment decrees that the requested writ of mandate is granted directing the Superior Court of King County to take jurisdiction of the service corporation's action for injunctive relief (Tr. 92-93; Appendix A, *infra*, pp. 49-50). By order of the Chief Justice of the Supreme Court of Washington, the judgment has been stayed, pending this petition for certiorari (Tr. 94-95).

## REASONS FOR GRANTING WRIT

### 1. The Judgment of the Court Below Is Based Upon the Court's Erroneous Interpretation of the Scope of the National Labor Relations Act, Contrary to the Language of the Act and the Decisions of This and Other Courts

The court below held that the activities of Seattle's Yellow Cab system are not within the scope of the National Labor Relations Act. The court acknowledged that the taxicab system did an annual gross business of $1,429,914.02 and that a substantial portion of this revenue was earned through the exercise of franchises with the railroad, airline and steamship terminals, utilized by interstate carriers of passengers, by which it was granted exclusive rights to pick up passengers arriving at these terminals. But, in the court's view (1) the operations of the taxicab system do not constitute an integral part of interstate commerce and (2) there is no evidence the strike of Local 465 has actually burdened or obstructed the service to and from the railroad, airline and steamship terminals so that it could be said to "affect commerce." Petitioners submit that in so holding the court misinterpreted the scope of the National Labor Relations Act.

#### a. *Contrary to the holding of the court below, the scope of the National Labor Relations Act extends beyond activities in interstate commerce to activities which affect interstate commerce*

In holding that the activities of the Seattle Yellow Cab system are not a part of interstate commerce, the opinion of the court below conflicts squarely with decisions of the National Labor Relations Board. The Board has held that where a taxicab company services

the terminals of interstate railroads and airlines, it is functioning "as an essential link in the services performed by the interstate carrier."[4]

Furthermore, in stating the issue to be "whether the Seattle Yellow Cab system is engaged 'in (interstate) commerce'," the court below applied an erroneous and restrictive interpretation of the National Labor Relations Act. The Act, by its very terms, extends not only to industries which are engaged in commerce but to all industries which "affect commerce." Appendix B, *infra*, pp. 51-55. In the early days of the Act's administration this court had occasion to point out that the Act was an exercise of the full reach of the constitutional power of Congress to "regulate commerce" and that it extended to activities which, separately considered, could be deemed to be intrastate in character:

> "It has been settled by repeated decisions of this court that an employer may be subject to the National Labor Relations Act although not himself engaged in commerce. The end sought in the enactment of the statute was the prevention of the disturbance to interstate commerce consequent upon strikes and labor disputes induced or likely to be induced because of unfair labor practices named in the Act. . . . Long before the enactment of the National Labor Relations Act it had been many times held by this court that the power of Congress extends to the protection of interstate commerce from interference or injury due to activities which are wholly intrastate." *NLRB v. Fainblatt*, 306 U.S. 601, 604-605, 83 L.ed. 1014 (1939).

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[4] *Red Cab, Inc.*, 92 NLRB 175 (1950). (See full discussion of the Board cases, *infra*, pp. 28-34).

Thus, even if the activities of the Seattle Yellow Cab system do not constitute an integral part of interstate commerce, this does not dispose of the question of whether these activities bring the taxicab system within the scope of the National Labor Relations Act. The proper test is whether these activities "affect commerce." Petitioners contend that the evidence in this case is more than sufficient to establish that the activities of the Seattle Yellow Cab system affect commerce, *i.e.*, that unfair labor practices on the part of the system or the union could lead "to a labor dispute burdening or obstructing commerce or the free flow of commerce."[5]

**b. *Decisions arising under the Sherman Anti-Trust Act and the Fair Labor Standards Act are inapposite in determining the scope of authority granted to the National Labor Relations Board by the National Labor Relations Act***

In holding that the activities of the Seattle Yellow Cab system were not subject to the jurisdiction of the

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[5] A labor dispute involving this taxicab system which operates 120 taxicabs and which does an annual business of almost one and one-half million dollars could logically burden or obstruct commerce in the following ways, among others: (1) by cutting off taxicab transportation to and from the railroad, airline and steamship terminals, making it difficult or impossible for passengers to utilize interstate railroads, airlines and steamships, and thus impeding, curtailing or diminishing the activities of such carriers; (2) by cutting off taxicab transportation to and from the large industrial plants, such as are found in a city the size of Seattle, thereby impeding, curtailing or hindering the operation of such plants; (3) by cutting off or curtailing the purchases of taxicabs, gasoline, tires and other supplies ordinarily made by a large taxicab company; thus impeding, curtailing or diminishing interstate shipment of such items. Furthermore, the immediate dispute might be "representative of many others throughout the country, the total incidence of which if left unchecked may well become far reaching in its harm to commerce." *Polish National Alliance v. NLRB*, 322 U.S. 643, 648, 88 L.ed. 1509 (1944).

National Labor Relations Board, the court below cited *United States v. Yellow Cab Co.*, 332 U.S. 218, 91 L.ed. 2010 (1947), a case arising under the Sherman Anti-Trust Act, 26 Stat. 209, as amended, 15 U.S.C., Sec. 1 *et seq.*, and *Mateo v. Auto Rental Co.* (9th Cir. 1957) 240 F.2d 831, a case arising under the Fair Labor Standards Act, 52 Stat. 1060, as amended, 29 U.S.C. Sec. 201 *et seq.* The court below relied heavily upon the *Yellow Cab Co.* decision, considering it as "appropriate authority for the position we here take" (Tr. 89; Appendix A, *infra*, p. 45).

Petitioners respectfully submit that both the *Yellow Cab Co.* and *Mateo* cases, *supra*, are inapposite to the issue of whether the activities of the Seattle Yellow Cab system are subject to the National Labor Relations Board. The two federal statutes involved in those cases are not similar in scope to the National Labor Relations Act.

In *United States v. Yellow Cab Company, supra*, the issue for this court's resolution was whether a complaint stated a cause of action under the Sherman Act, which prohibits contracts or conspiracies "in restraint of trade or commerce among the several states." The complaint alleged, in part, that the defendant had conspired to monopolize the taxicab business in the City of Chicago. This business was asserted to have an interstate character because the taxicabs involved, in the course of their ordinary operations in and around Chicago, took passengers to and from the Chicago railroad stations.[6]

[6] This court was careful to point out that the taxicab companies involved had "no contractual or other arrangements with the interstate rail-

This court held that these allegations were not sufficient to state a cause of action under the Sherman Act for, in this court's view, the transportation of passengers to and from the railroad stations did not constitute "an integral part of interstate commerce." However, the court very carefully pointed out that its decision was based solely upon the facts of the particular case, as applied to the Sherman Act. No other federal act was involved or interpreted. Said the court:

> "We do not mean to establish any absolute rule that local taxicab service to and from railroad stations is completely beyond the reach of federal power or even beyond the scope of the Sherman Act.
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> * * *
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> "All that we hold here is that when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation. And a restraint on or monopoly of that general local service, without more, is not proscribed by the Sherman Act." 332 U.S. 218, 232-233.

Thus, this court in the *Yellow Cab* case was not called upon to decide whether certain activities of a taxicab company, in transporting passengers to and from railroad stations in the City of Chicago, might "affect commerce," within the meaning of the National Labor Re-

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roads." 332 U.S. 218, 231. This alone would distinguish the *Yellow Cab* case from the instant case. Here, the trips to and from the terminals are made pursuant to franchise or concession agreements which give the taxicab company the exclusive right to service the terminals and which require the company to maintain adequate service at the terminals. See *supra*, pp. 10-13.

lations Act. For this reason, petitioners contend that the *Yellow Cab* decision does not support the judgment below.

Petitioners also contend that the judgment of the court below receives no support from *Mateo v. Auto Rental Company, supra.* Here the issue was whether the drivers of vehicles taking passengers to and from the Honolulu airport were "engaged in commerce" within the meaning of the Fair Labor Standards Act. The court did not have before it, nor did it pass upon, the issue of whether the operations of these drivers might "affect commerce." Indeed, the court took pains to point out that such an issue was not involved in the case:

> "Our analysis of the applicable law must of necessity commence with the statutory language (of the Fair Labor Standards Act). We note initially that Congress has not legislated to the constitutional limits of the commerce power, but has instead restricted the purview of the Act to those 'engaged in commerce.' It is not enough that the activity affect commerce; the employee must actually be engaged in interstate commerce. We therefore set aside considerations which govern the determination of those cases dealing with the broader 'affect' concept. Neither do we regard as relevant those cases involving the 'production of goods for commerce' provision. Of these three different phrases used in connection with the commerce power, the one with which we are concerned is the narrowest in scope."

Accordingly, the *Mateo* decision is inapposite to the issues in the instant case. It is interesting to note, in

this connection, that the National Labor Relations Board has refused to consider decisions arising under the Fair Labor Standards Act, in determining the exercise of its own jurisdiction. In *Roane-Anderson Company*, 77 NLRB 953 (1948), the employer challenged the exercise of the Board's jurisdiction on the ground that two recent decisions of a federal district court had held that his business was not covered by the Fair Labor Standards Act. The Board rejected this argument, stating:

> "The definition of the Board's jurisdiction is, however, broader than that granted in the Fair Labor Standards Act. The Board's jurisdiction extends to employers and employees whose operations 'affect commerce' whereas the application of the Fair Labor Standards Act is limited to employees 'engaged in commerce' or 'in the production of goods for commerce'."

For the foregoing reasons petitioners submit that decisions arising under the Sherman Act and the Fair Labor Standards Act are inapposite to the issue of whether the activities of the Seattle Yellow Cab system, in the instant case, fall within the scope of the National Labor Relations Act and are subject to the National Labor Relations Board.

***c. Contrary to the holding of the court below, the jurisdiction of the National Labor Relations Board is not dependent upon a showing that there has been an actual stoppage or obstruction of interstate commerce***

The court below devoted but a single paragraph to the question of whether the activities of the Seattle Yellow Cab system might "affect" commerce. The court below held that commerce was not affected in this case

because there was no evidence that the strike and picketing of Local 465 had interfered with the transportation of passengers to and from the railroad, airline and steamship terminals and thus no evidence that commerce was actually burdened or obstructed (Tr. 90, Appendix A, *infra*, p. 47).

The holding of the court is, first of all, inconsistent with the position of the plaintiff service corporation in the trial court and in the court below. While it is true that little testimony was taken on the matter, the service corporation continually took the position that the strike and picketing was causing irreparable damage to the taxicab business conducted by it and the purchasing corporations. See, for example, the affidavit of A. H. Wenck, president of the service corporation, filed in support of the application for a writ of mandate, wherein he asserts that the dispatchers and drivers have not reported for work, that this has caused "substantially reduced operations," that there have been "considerable delays" in rendering services, and that a continuation of the strike and picketing may put the service corporation and the purchasing corporations completely "out of existence, thereby diminishing competition and also injuring the general public" (Tr. 45-46).

Secondly, the court below clearly erred in holding that the jurisdiction of the National Labor Relations Board is dependent upon a showing that unfair labor practices have resulted in a labor dispute actually burdening commerce. This court and other courts which have considered this contention have uniformly held that the exercise of jurisdiction by the Board is not de-

pendent upon a showing of an actual stoppage or impairment of commerce:

> "It is not material as the court below thought, that respondent's customers might be able to secure the same services from other Rhode Island processors if the labor dispute should stop the interstate flow of materials to and from respondent's plant. Since the purpose of the act is to protect and foster interstate commerce, the Board's jurisdiction can attach, as here, before actual industrial strife materializes to obstruct that commerce." *NLRB v. Bradford Dyeing Association*, 310 U.S. 318, 326, 84 Led. 1226 (1940).

Accord: *Phoenix Mutual Life Insurance Company*, 73 NLRB 1463 aff'd (7th Cir. 1948) 167 F.2d 983; *NLRB v. Alloy Cast Steel Co.* (6th Cir. 1941) 117 F.2d 302; *NLRB v. American Potash and Chemical Corp.* (9th Cir. 1938) 98 F.2d 488.

**2. The Judgment of the Court Below Conflicts with the Decisions of the National Labor Relations Board**

On October 2, 1958, the National Labor Relations Board announced, through a press release, that henceforth it would assert jurisdiction over any taxicab company which does an annual gross business of $500,000 or more. It also announced that henceforth it would assert jurisdiction over any company operating as an instrumentality, link or channel of commerce which annually grosses $50,000 from the interstate, or linkage part of its business, or any company which annually grosses $50,000 from services performed for companies

in interstate commerce. (NLRB Press Release, No. R-576, October 2, 1958).[7]

Pursuant to its October 2, 1958, announcement, the National Labor Relations Board is now taking jurisdiction over local taxicab companies which annually gross more than $500,000. The first reported case in which the Board applied its new standards is *Cab Services, Inc.*, 123 NLRB No. 19 (March 12, 1959).[8] There, as in the instant case, the taxicab business is carried on by a number of individual taxicab owners and a service corporation. Among other things, the service corporation, in which the taxicab owners hold stock, supplies dispatching, bookkeeping and managerial services to the taxicab owners. The service corporation employs a "manager" who hires, fires and disciplines the employee-drivers, and who assigns them to drive the various cabs.

Noting that even the parties in the case agreed that the operations of the service corporation and the taxicab owners were "closely integrated," the Board found that these companies constituted a single Employer, and that the Employer's annual gross volume of business exceeded $700,000. The Board then asserted its jurisdiction, and directed that a representation election be held among the employee-drivers working for the Employer. Said the Board:

"In view of the Board's decision to apply its re-

[7] For the convenience of the court, the pertinent portions of this press release are printed in Appendix C, *infra*, pp. 56-57.

[8] For the convenience of the court, the Board's decision in this case, which is not yet printed in bound volumes of Board decisions, is printed in Appendix C, *infra*, pp. 58-64.

vised jurisdictional standards to all pending cases, and as the Employer's volume of business exceeds the $500,000 minimum prescribed for retail enterprises, including taxicab companies, we find that it will effectuate the policies of the Act to assert jurisdiction herein."

In the past decade the Board has had a wavering policy with respect to whether it should *assert* jurisdiction over local taxicab companies, but it has never held that it did not *possess* the jurisdiction or power to deal with such companies, especially where the evidence showed that they serviced the terminals of interstate railroads, bus lines, and air lines.[9]

In 1949 the Board asserted jurisdiction over a local bus and taxicab company operating in a small Colorado community noting, among other things, that "In the course of its operations, the Company's taxis haul passengers to the railroad company, bus and air terminals in the usual proportion for communities the size of Westwood. *Bussard Taxi and Bus Service*, 81 NLRB 1181 (1949).[10]

In 1950, however, the Board announced that it would not *assert* jurisdiction over a local taxicab company in the City of Los Angeles even though it had an annual gross revenue of more than $10,000,000 and a substantial portion of this revenue was received from trips made to and from the railroad stations, bus terminals,

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[9] As this court observed in *NLRB v. Denver Building and Construction Trades Council et al.*, 341 U.S. 675, 95 L.ed. 1284 (1951) the Board often refuses to exercise or assert the full measure of jurisdiction which it possesses.

[10] See also: *Chicago Grey Line, Inc.*, 81 NLRB 466 (1949) and *Gates City Transit Lines*, 88 NLRB 79 (1949).

and the airport. *Yellow Cab Company of California*, 90 NLRB 1884 (1950).[11] The Board held:

> "While we believe that the employer's business is not entirely unrelated to interstate commerce, we are of the opinion that its operations are essentially local in character and we find that it would not effectuate the policies of the Act to assert jurisdiction in this case."

A few months later the Board reversed the *Yellow Cab Company of California* decision and asserted jurisdiction over a local taxicab company in Indianapolis, Indiana. *Red Cab, Inc.*, 92 NLRB 175 (1950). The evidence showed that the taxicab company had contracts with railroad, bus and airline terminals, used by interstate carriers, by which it was granted exclusive rights to pick up passengers at these terminals and that 5.1% of its annual trips were made from these terminals. The Board held:

> "... a portion of the employers' business involves providing transportation services from four established terminals, concededly handling interstate traffic, under arrangements which give the employer certain special and exclusive privileges regarding such services. In these circumstances, we are persuaded that the employers' operation may properly be regarded as an essential link in the services performed by these instrumentalities of commerce, and believe that the reasons which motivated our decision to assert jurisdiction over such instrumentalities are easily applicable here. We

[11] For other decisions in which the Board declined to assert jurisdiction over local taxicab companies see: *Skyview Transportation Company*, 90 NLRB 1895 (1950); *Brooklyn Cab Company*, 90 NLRB 1898 (1950).

therefore find that it will effectuate the policies of the Act to assert jurisdiction in this case."

* * *

"(footnote 10) The decision in *Yellow Cab Company of California*, 90 NLRB 1884, is hereby overruled insofar as it conflicts with the instant decision."[12]

In *Cambridge Taxi Company*, 101 NLRB 1328 (1952) the Board announced a modification of its jurisdictional policy with respect to taxicab companies, stating that, in the future, it would only assert jurisdiction where the taxicab company involved was either the sole company in the area servicing the terminals of interstate carriers or where it performed such service pursuant to an exclusive franchise or agreement, and where the income received from such services constituted a substantial portion of total revenue.[13]

Finally, in 1954, the Board reverted to the position taken earlier, in the *Yellow Cab Company of California* case, and stated that it would no longer assert jurisdiction over local taxicab companies. *Checker Cab Company*, 110 NLRB 683 (1954). This decision was cited by the court below in support of its holding that the Board does not have jurisdiction of the taxicab company in the instant case (Tr. 89; Appendix A, *infra*, at p. 46). However, in this decision, as well as the

[12]For other decisions in which the Board asserted jurisdiction over local taxicab companies see: *Skyview Transportation Company*, 90 NLRB 1664 (1951) reversing the prior decision in 90 NLRB 1895 (1950); *Rite Rate Cab Co.*, 95 NLRB 1302 (1951); *Charman Service Corporation*, 99 NLRB 534 (1952); *Red Cab Company*, 98 NLRB 932 (1952), enf'd. *NLRB v. Cashman Auto Company* (1st Cir. 1952) 200 F.2d 412.

[13]For decisions in which the Board applied this modified policy see: *New Taxi Dispatch Corporation*, 110 NLRB 1327 (1952); *The Taxi Transit Company*, 102 NLRB 45 (1953); *Yellow Cab Company* (Wichita Falls, Texas), 103 NLRB 395 (1953).

earlier decisions where the Board declined jurisdiction over taxicab companies, the Board was careful to point out that it was not holding that taxicab companies fell outside the scope of the Board's power but simply that the full measure of this power or jurisdiction would not be exercised. As the Board stated in the *Checker Cab Company* decision:

> "Jurisdiction will not be *asserted* over the Employer. *We are willing to concede that taxicab companies, like those involved in this case, may fall within the broad scope of the Board's legal power to assert jurisdiction.* However, as recognized by the court, the Board may properly refuse to exert the full limits of this power when the assertion of jurisdiction will not effectuate the basic purposes of the Act."
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> * * *
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> "Accordingly we shall refuse to *assert* jurisdiction over taxicab companies, and the *Cambridge* decision is hereby overruled." (Emphasis added)[14]

The judgment of the court below conflicts squarely with the decisions of the National Labor Relations Board. At the present time the Board is asserting jurisdiction over local taxicab companies, like the one in the instant case, which have an annual gross volume of business in excess of $500,000. In the opinion of the court below, "the ultimate test is not the amount of gross volume of business."

In the past, the Board has asserted jurisdiction over local taxicab companies, like the one in the instant case,

[14] It is doubtful, in view of the rulings of this court, that the Board could lawfully refuse to assert jurisdiction over taxicab companies, as a class, as it attempted to do in this 1954 decision. *Hotel Employees Local 255 et al. v. Leedom*, — U.S. —, 3 L.ed. 143 (1958).

which devote a substantial portion of their operation to delivering and picking up passengers at terminals of interstate railroads, bus lines and air lines. The Board has ruled in these cases, that such operations constitute "an essential link in the services performed by the instruments of commerce" and that they "affect commerce" within the meaning of the Act. In the opinion of the court below, the activities of the company in the instant case do not constitute an "integral step in the interstate movement of passenger traffic" and do not "affect commerce" within the meaning of the Act.

**3. The Judgment of the Court Below Conflicts with the Decisions of the New York Courts in *New York State Labor Relations Board v. Wags Transportation System, Inc.*.**

Not only does the judgment of the court below conflict with the decisions of the National Labor Relations Board, but it also conflicts with the decisions of the New York courts in *New York State Labor Relations Board v. Wags Transportation System, Inc.*, 130 N.Y.S. 2d 731, aff'd 284 App. Div. 883, 134 N.Y.S.2d 603 (1954). In this case the New York State Labor Relations Board brought an action seeking to enforce an order issued by it against the Wags Transportation System, Inc., a New York City taxicab company. The company defended on the ground that the controversy was subject to the exclusive jurisdiction of the National Labor Relations Board. The evidence showed that the company owned and operated 57 taxicabs and that it was part of an over-all system of 29 taxicab companies known as the Terminal System, Inc. Terminal did

not operate any taxicabs but it possessed agreements with the New York Central Railroad, New Haven Railroad, Pennsylvania Railroad, and other railroads by which its member companies were given the exclusive right to maintain their taxicabs at these terminals for the purpose of servicing incoming passengers. More than 15% of the trips made by Terminal System taxicabs were made from these terminals.

The court held that, under National Labor Relations Board decisions, it was proper to consider all of the companies making up the terminal system as a single unit or single employer to determine the existence of the Board's jurisdiction. The court also held that the operations of the Terminal System "affected commerce" and were subject to the exclusive jurisdiction of the National Labor Relations Board:

> "Taxicabs, particularly those which have a franchise to serve railroad and bus terminals, are an adjunct of interstate travel. Their temporary unavailability would constitute a burden upon interstate rail and bus travel . . . Industry or commerce need not be dealt a paralyzing blow before it can be deemed to be burdened by a labor dispute affecting such commerce. As a practical matter, curtailment or elimination of such taxi service would have a substantial effect upon interstate commerce. A labor dispute could very well have a greater impact upon transportation service to interstate passengers than a conspiracy to exclude competition. Wags' operation has a sufficient impact upon interstate commerce to justify the NLRB in asserting jurisdiction over its operation."

This decision is in irreconcilable conflict with the holding of the court below.

**4. The Judgment of the Court Below Conflicts with the Position of the Federal Mediation and Conciliation Service in This Case**

When the strike of Local 465 against the Seattle Yellow Cab enterprise got under way; the Federal Mediation and Conciliation Service stepped in and summoned the parties to a meeting to attempt to resolve their differences so that the strike could be terminated. Two such meetings were held, but no agreement was reached and the strike continued (Tr. 12-13,28; St. 117-123).

Under the statutes creating the Federal Mediation and Conciliation Service, that Service is given jurisdiction to offer its services only in a "labor dispute in any industry affecting commerce . . . whenever in its judgment such dispute threatens to cause a substantial interruption of commerce." 61 Stat. 152, as amended, 29 U.S.C. Secs. 171-174. Thus, in the instant case, the Federal Mediation and Conciliation Service, by offering its services, made a determination that the activities of the Seattle Yellow Cab system "affected commerce" and that the strike of Local 465 threatened to cause a "substantial interruption in commerce."

The judgment of the court below, based as it is upon a holding that the Seattle Yellow Cab system is not engaged in commerce and that the strike of Local 465 does not affect commerce, conflicts with the position and determination of the Federal Mediation and Conciliation Service.

## CONCLUSION

We have indicated above the reasons why this petition for a writ of certiorari should be granted. The judgment of the court below (1) is based upon the court's erroneous interpretation of the scope of the National Labor Relations Act; (2) conflicts with the decisions of the National Labor Relations Board; (3) conflicts with the decisions of the New York courts in the *Wags Transportation System* case; and (4) conflicts with the position taken by the Federal Mediation and Conciliation Service.

Because of the conflict between the position of the court below and the position of the National Labor Relations Board, this case is of great interest, not only to the litigants immediately involved, but to taxicab companies and unions across the nation. It is of importance to these companies and unions to know whether their right and duties, in the field of labor management relations, are to be governed by the state or federal law.

WHEREFORE, petitioners respectfully pray that this petition be granted and a writ of certiorari issue to review the judgment of the court below.

Respectfully submitted,

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*Counsel for Petitioners.*

*Of Counsel:*

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# APPENDIX A

## I. OPINION OF THE SUPREME COURT OF WASHINGTON

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON on the Relation of YELLOW CAB SERVICE, INC., a corporation, *Plaintiff and Relator,*

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 455; and GEORGE LANCASTER, its Secretary-Treasurer, *Defendants and Respondents,*

and

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, THE HONORABLE LLOYD SHORETT, Judge, *Respondent.*

No. 34929
*En Banc*

This is an application for a writ of mandate sought by the relator, Yellow Cab Service, Inc., a Washington corporation, to direct the superior court of King county to take jurisdiction of its action against the International Brotherhood of Teamsters (hereinafter referred to as the union) to enjoin the picketing of its premises. The union successfully attacked the superior court's jurisdiction over the relator's action on the ground that the only proper forum was the National Labor Relations Board.

Some background on the controversy between the relator and the union is necessary. Until 1955, the Yel-

low Cab company in Seattle was a partnership. During 1955 and 1956, a plan of liquidation was put into effect, under which all of the taxicabs were sold to some one hundred-eighteen individual Washington corporations independent in ownership from the relator corporation and from the original partnership. These one hundred-eighteen individual corporations, most of which purchased just one taxicab, then undertook the functions of operating their respective taxicabs. All taxicabs were purchased under conditional sales contracts from the partnership, none of which has been completely paid off as yet.

The trial court found that the relator corporation was organized for two purposes: (1) for service to the one hundred-eighteen individual taxicab operators, and (2) for assurance to the partnership that the taxicabs it had sold would ultimately be paid for. The relator corporation is controlled by the original partnership.

The central dispatching facilities were transferred to the relator. The relator also furnishes for the individual taxicab operators accounting and bookkeeping services, advertising services, and services as a bargaining agent for insurance upon all of the taxicabs. From the partnership the relator has derived certain exclusive contractual rights for Yellow Cabs to pick up arriving passengers at the Seattle railroad terminals, airports, and passenger steamship docks. The relator holds and owns the Yellow Cab color rights, and the good will attached to the name of the Yellow Cab company, and grants their use to the individual taxicab operators.

As security during the period in which the taxicabs

are being paid for, the partnership retains, through its conditional sales contracts, a considerable control over the quality of the Yellow Cab service. The conditional sales agreements give the partnership the right to repossess taxicabs if their operators are guilty of breaches of good operating procedure as defined by the directors of the relator corporation, though, in practice, no such repossession has taken place. Matters of operating procedure and discipline of taxicab operators are handled through an operating committee of all of the operators, plus the representatives of the relator. Power to discipline operators is sometimes delegated by the operating committee to a "personnel manager" supplied by the relator.

In 1956, the relator and all of the operators bargained together with the union in making a contract which all parties signed. This contract terminated on June 1, 1958. The relator claims that it has accepted the union contract offered this year, and that many of the independent operators have also done so. The union, it is charged, has refused to sign the contract with the relator or any of the operators until some twenty to thirty of the operators, who have not at this time accepted the offered contract, be persuaded, or compelled, to accept it. Furthermore, the relator charges that as a result of the union's dispute with these twenty to thirty operators the union is picketing the relator's place of business in Seattle, and such picketing has caused relator's crew of dispatchers to leave their jobs and remain away until such time as all of the taxicab operators, along with relator, agree to the union's contract. The relator, therefore, claims that it has no part in

whatever labor dispute now exists, and that the picketing of its premises can properly be enjoined.

The merits of this case were never determined in the superior court, due to that court's decision that it did not have jurisdiction to proceed with the case. The superior court decided that the Yellow Cab system was in interstate commerce and that the case presented a labor dispute affecting interstate commerce over which the National Labor Relations Board would have jurisdiction. Relying on *Guss v. Utah Labor Relations Board* (1957) 353 U.S. 1, the superior court held that the federal jurisdiction over this case was exclusive and preempted the state court's jurisdiction.

The National Labor Relations Act empowers the National Labor Relations Board "to prevent . . . any person from engaging in any unfair labor practice . . . affecting commerce." 49 Stat. 453, 29 U.S.C.A. § 160(a). The definition of the term "affecting commerce" is given as follows, at 49 Stat. 450, 29 U.S.C.A. § 152(7):

> "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead a labor dispute burdening or obstructing commerce or the free flow of commerce."

The term "commerce" used herein at all times refers to interstate commerce subject to Federal regulation. See 49 Stat. 450, 29 U.S.C.A. § 152(6).

The first question to be answered concerning the National Labor Relations Board's jurisdiction in this case is whether Seattle's Yellow Cab system is "in (interstate) commerce." The conclusion of this court is that it is not.

The union places some reliance on a recent press release (October 2, 1958) from the National Labor Relations Board indicating that it will assume jurisdiction in cases involving taxicab companies where the annual gross volume of business is $500,000 or more. We are of the opinion that the ultimate test is not the amount of gross volume of business, but whether the local transportation service is an integral part of interstate commerce. *Guss v. Utah Labor Relations Board, supra.*

The Yellow cabs are based in the city of Seattle and operate almost entirely within King county. In order to establish that they are in interstate commerce, the union relies upon the business these taxicabs do in picking up and delivering passengers at the railroad terminals, airports, and passenger steamship docks. The total gross revenues received by all of the hundred and eighteen taxicab corporations from July 1, 1957, through June 30, 1958, was $1,429,914.02. Gross revenues received from picking up passengers from the Seattle airports were $141,460.80 from Seattle-Tacoma Airport and $14,601.60 from King County Airport (Boeing Field). An estimate was made at the trial that this constituted seventy per cent of the full business of these taxicabs in serving these airports, the remaining thirty per cent involving trips *to* the airports. Not all of these gross revenues came from passengers traveling interstate, however it appears that a substantial portion did.

No similar accounting was made concerning the gross revenue derived from servicing the railroad terminals or the passenger steamship docks, except for a relatively few passengers who, on prearranged tours, arrived at railroad terminals and took taxicabs directly

to the Canadian Pacific docks, paying their taxicab fare by coupon. The gross revenues from the coupons received from these travelers totalled just $1,436.55 during the accounting year (approximately one-tenth of one per cent of the gross revenues).

A taxicab company having relatively the same scope of business was considered by the Supreme Court of the United States in *United States v. Yellow Cab Co.* (1947) 332 U.S. 218, 67 S.Ct. 1560, 91 L.Ed. 2010. That case concerned the sufficiency of a complaint brought under the Sherman Antitrust Act, involving, among other things, monopolistic practices in the Chicago taxicab fleet. The court held that the Sherman act did not apply to the Chicago taxicab business because this manner of transportation was too predominantly a local activity to constitute an integral part of interstate commerce. The court held that,

> "... when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation. ..." 332 U.S. at 233.

As explanation for this holding, the court said:

> "In a sense, of course, a traveler starts an interstate journey when he boards a conveyance near his home, office or hotel to travel to the railroad station, from which the journey is continued by train; and such a journey ends when he alights from a conveyance near the home, office or hotel which constitutes his ultimate destination. Indeed,

the terminal points of an interstate journey may be traced even further to the moment when the traveler leaves or enters his room or office and descends the building by elevator.

"But interstate commerce is an intensely practical concept drawn from the normal and accepted course of business. *Swift & Co. v. United States*, 196 U.S. 375, 398; *North American Co. v. S. E. C.*, 327 U.S. 686, 705. And interstate journeys are to be measured by 'the commonly accepted sense of the transportation concept.' *United States v. Capital Transit Co.*, 325 U.S. 357, 363. Moreover, what may fairly be said to be the limits of an interstate shipment of goods and chattels may not necessarily be the commonly accepted limits of an individual's interstate journey. We must accordingly mark the beginning and end of a particular kind of interstate commerce by its own practical considerations.

"Here we believe that the common understanding is that a traveler intending to make an interstate rail journey begins his interstate movement when he boards the train at the station and that his journey ends when he disembarks at the station in the city of destination. What happens prior or subsequent to that rail journey, at least in the absence of some special arrangement, is not a constituent part of the interstate movement. . . . " 332 U.S. at 231 and 232.

The task of drawing the line which bounds interstate commerce is anything but simple. *United States v. Yellow Cab Co., supra*, has drawn such a line, however, and we consider its holding to be an appropriate authority for the position we here take.[1]

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[1] That *United States v. Yellow Cab Co., supra*, was decided under the Sherman Act does not make it less an authority upon the instant case.

More recently the Ninth Circuit Court of Appeals has considered the question of whether employees who drove airport limousines back and forth between downtown Honolulu and the airport were within the provisions of the Fair Labor Standards Act. See *Mateo v. Auto Rental Co.* (1957) 240 F.(2d) 831. The precise issue in that case was whether the drivers of so-called "airporter" vehicles in Honolulu were engaged in interstate commerce, and the "ultimate test is whether the local transportation service is an 'integral step in the interstate movement'." The court held that the drivers were not engaged in "interstate commerce."

A similar holding has also been made by the National Labor Relations Board in *Checker Cab Co.* (1954) 110 N.L.R.B. 683, wherein it was stated:

> "? . . Taxicab companies, by their very nature, perform local operations and are essentially local entities. To assert jurisdiction over such enterprises would neither comport with the congressional intent that the Board refrain from extending its activities to matters of local significance, nor otherwise effectuate the policies of the Act."

We do not believe that whatever unfair labor practice may be present in this case can possibly be said to be "burdening or obstructing commerce" (see 49 Stat.

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In that case, as in this one, the issue was whether there was any appreciable aspect of interstate commerce involved in the city's taxicab business. The court said, page 225, "But the amount of interstate trade thus affected by the conspiracy is immaterial in determining whether a violation of the Sherman Act has been charged in the complaint. Section 1 of the Act outlaws unreasonable restraints on interstate commerce, regardless of the amount of the commerce affected. *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, note 59, p. 225; *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 485. . . . " Hence it is enough if some appreciable part of interstate commerce is the subject of a monopoly, a restraint or a conspiracy.

450, 29 U.S.C.A. §152(7) quoted above). There is no testimony in the record that this strike has impaired taxicab service to or from the railroad terminals, airports, and docks, and hence no evidence of any effect upon interstate commerce sufficient to justify the application of the National Labor Relations Act. *United States v. Yellow Cab Co., supra.* No such circumstance is present in this case.

It would be easier to assert as interstate commerce the carriage of those above-mentioned passengers on prearranged tours to take Yellow Cabs directly from the railroad terminals to the Canadian Pacific docks. A comparison of gross revenues derived from this source, however, against the total gross revenues received from all Yellow Cab operations, shows that this station-to-docks business comprises one-tenth of one per cent of the total Yellow Cab operations.

The issue presented here concerning the scope of interstate commerce requires a determination guided by practical considerations, not technical conceptions. *Mateo v. Auto Rental Co., supra.* If it be conceded that one-tenth of one per cent of its total operations is in interstate commerce, we do not believe that Seattle's Yellow Cab system constitutes such an integral step in the interstate movement of passenger traffic as to be considered as being in interstate commerce, nor that any unfair labor practices whether by the union or the Yellow Cab system burden or obstruct interstate commerce. For this reason the superior court was in error in holding that the jurisdiction of this case lies with the National Labor Relations Board.

For the consideration of the jurisdictional issues here presented, we have accepted the union's hypothesis that the relator and the one hundred-eighteen operating corporations constitute a system that can be treated as an entity. If it is such an entity, a matter which we do not decide, we hold that there is no unfair labor practice here involved which affects or burdens interstate commerce.

The writ of mandate is hereby granted directing the superior court of King county to take jurisdiction of relator's suit for injunctive relief.

HILL, C. J.

We concur:

MALLORY, J.
FINLEY, J.
WEAVER, J.
DONWORTH, J.
ROSELLINI, J.
OTT, J.
FOSTER, J.
HUNTER, J.

## 2. JUDGMENT OF THE SUPREME COURT OF WASHINGTON

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

| | |
|---|---|
| THE STATE OF WASHINGTON on the Relation of YELLOW CAB SERVICE, INC., a corporation, *Relator*, vs. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION No. 465; and GEORGE LANCASTER, its Secretary-Treasurer, *Defendants and Respondents*, and THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, THE HONORABLE LLOYD SHORETT, Judge, *Respondent*. | Tuesday, February 10, 1959 **JUDGMENT** |

This cause having been heretofore submitted to the Court upon the application of the relator for a writ of Mandate to direct respondent to take jurisdiction of its action against the International Brotherhood of Teamsters to enjoin the picketing of its premises in that certain cause in which Yellow Cab Service, Inc., a corporation, is plaintiff and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; et al., are defendants in the records of the Superior Court of the State of Washington in and for King County being cause No. 526958 of said Court, and the Court having fully considered the same and filed its opinion in writing, granting the writ, and on motion

of Little, LeSourd, Palmer, Scott and Slemmons, of counsel for relator,

IT IS ORDERED, Adjudged and Decreed, that the Writ of Mandate be and the same is granted, directing the superior court of King County to take jurisdiction of relator's suit for injunctive relief; and that the said Yellow Cab Service, Inc., a corporation, have and recover of and from the said International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Taxicab Drivers and Chauffeurs Local Union No. 465, and George Lancaster, its Secretary-Treasurer, the costs of this action taxed and allowed at one Hundred fifty-eight and 50/100 Dollars ($158.50); and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

Judgment of Record in
Journal 42 at page 594
in the Office of the
Clerk of the Supreme Court.

## APPENDIX B

## STATUTE INVOLVED

Pertinent sections of the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. Secs. 141-187, are as follows:

### Short Title and Declaration of Policy

* * * * * * * *

Section 1 b) . . . It is the purpose and policy of this Act, in order to promote a full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

### Findings and Policies

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages

in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest in the public in the free flow of commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial

obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by the workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Definitions

* * * * * * * *

Section 2. When used in this Act—

* * * * * * * *

(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States. . . .

(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * * * * *

Rights of Employees

Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

Unfair Labor Practices

* * * * * * * *

Section 8(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * * * * *

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a).

* * * * * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representatives of his employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party. . . .

* * * * * * * *

Prevention of Unfair Labor Practices

Section 10(a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determinations of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * * * * *

Limitations

Section 13. Nothing in this Act, except as specifically

provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

* * * * * * * *

## APPENDIX C

### 1. PRESS RELEASE OF NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BOARD
Washington, D. C.

FOR IMMEDIATE RELEASE (R-576)
THURSDAY, OCTOBER 2, 1958

### N.L.R.B. ANNOUNCES CHANGES IN EXERCISE OF JURISDICTION

The National Labor Relations Board today announced changes in its standards for determining in which cases the Board will exercise its jurisdiction. The current standards were adopted in July, 1954.

The new standards take immediate effect, applying both to all cases now pending before the Agency and to all cases which may be filed.

The various elements of the new standards will be set forth in decisions rendered by the Board following October 2, 1958.

The Board's action was taken pursuant to its statement of July 22, 1958, wherein the Board: (1) announced certain proposed changes in its standards; and (2) invited briefs or comments by any interested groups, organizations and persons. At that time the Board said:

> "We are taking this action as a consequence of the situation to which the Supreme Court referred in the case of *Guss v. Utah Labor Relations Board*. Therein the Supreme Court adverted to 'a vast no-man's land; subject to regulation by no agency or court,' and declared: (1) 'Congress is free to change the situation;' and (2) 'The National Labor

Relations Board can greatly reduce the area of no-man's land by reasserting its jurisdiction.'

"On Friday (July 18), the Congress voted approval of the Board's appropriation for the fiscal year 1958-1959. The total was $13,100,000, of which $1,500,000 took into allowance the extension of the Board's jurisdiction into some of the area covered by the so-called no-man's land.

"Today, we are announcing this action, so that more individuals, labor organizations and employers may invoke the rights and protections afforded by the statute."

Following are the new standards which revise somewhat the proposals set forth in the July announcement:

* * *

4. *Instrumentalities links and channels of Interstate Commerce*: $50,000 from interstate (or linkage) part of enterprise, or from services performed for employers in commerce.

* * *

6. *Transit systems*: $250,000 gross volume.[2]

[2]Except taxicabs, as to which the retail ($500,000 gross volume of business) test shall apply.

* * *

## 2. DECISION OF THE NATIONAL LABOR RELATIONS BOARD IN THE *CAB SERVICES, INC.*, CASE 123 NLRB No. 19

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

| | |
|---|---|
| CAB SERVICES, INC., d/b/a RED AND WHITE CAB COMPANY,[1] *Employer*, and CHAUFFEURS AND ASSOCIATED WORKERS UNION, *Petitioner*. | Case No. 18-RC-3779 Issued Mar. 9, 1959 |

### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Clarence A. Meter, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in the taxicab business in Minneapolis, Minnesota, operating about 48 cabs, 38 of which are owned by the individual owner-drivers

[1] Cab Services, Inc., is a Minnesota corporation, all of whose shareholders are cab owners who are also associated together in an unincorporated group known as Red and White Airway Taxicab Association. All parties agree that the operations of the corporation and the association are closely integrated, and that they constitute a single Employer.

who are the shareholders in Cab Services; the remaining cabs are owned by the corporation itself or by the Red and White Airway Taxicab Association. The Employer's annual gross volumes of business is in excess of $700,000. The gas and oil used in the Employer's operations, to the value of $60,000 per year, is purchased from sources which obtain it from outside Minnesota. The Intervenor contends that the Board should not assert jurisdiction here, because the contract between the Intervenor and the Employer, which the former urges as a bar, was entered into on the assumption that the rules of interpretation of the Minnesota Department of Labor would be applicable. In view of the Board's decision to apply its revised jurisdictional standards to all pending cases,[2] and as the Employer's volume of business exceeds the $500,000 minimum prescribed for retail enterprises, including taxicab companies, we find that it will effectuate the policies of the Act to assert jurisdiction herein.[3]

2. The labor organizations involved claim to represent certain employees of the Employer.[4]

3. The Intervenor contends that a current contract between it and the Employer is a bar to this petition. The contract, effective from February 15, 1958, to February 15, 1960, is a supplement to an existing "master agreement" between the parties. The Petitioner asserts

[2] *Siemons Mailing Service*, 122 NLRB No. 13.

[3] *Carolina Supplies and Cement Co.*, 122 NLRB No. 17, fn. 5.

[4] Minneapolis Taxicab Drivers, Livery Chauffeurs, Ambulance Drivers and Helpers Union, Local 958, I.B.T.C.W. & H. of A., referred to herein as the Intervenor, was permitted to intervene on the basis of its contractual relationship with the Employer.

that the contract is not a bar because the master agreement contains an invalid union-security clause. The provision in question is contained in Section I, paragraph A, of the master agreement, and reads as follows:

> "A. The Union shall be the sole representative of all employees covered by this agreement in collective bargaining with the Employer. There shall be no discrimination against any employee because of Union affiliation. The Employer agrees that after a Forty (40) day qualifying period, all new employees shall become members of the Union. In the event that the Union notifies the Employer that any of the drivers are not members in good standing with the Union, it shall be the duty of the Employer to discharge any such driver."

The contract fails to grant the requisite 30-day grace period during which non-member incumbent employees need not join the Intervenor. It thereby fails to conform to Section 8(a)(3) of the Act, and may not, therefore, serve as a bar to this petition.[5] We do not, in these circumstances, pass on other grounds urged by the Petitioner for finding the contract not a bar.

4. The parties agree that all taxicab drivers, servicemen, dispatchers and order takers employed by the Company constitute an appropriate unit. The Petitioner and Intervenor would also include, while the Employer would exclude, the owner-drivers.

Red and White Airway Taxicab Association is an organization comprised of 31 taxicab drivers, each of whom owns at least one cab. The Association itself owns 8 cabs. Each member of the Association owns a share of

[5] *Keystone Coat, Apron & Towel Supply Company*, 121 NLRB No. 125.

stock in Cab Services, Inc., a corporation which owns a building and land on which are located a gasoline station, quarters for drivers, business offices and a dispatching room. Cab Services provides its shareholders with bookkeeping, dispatching and managerial services, legal counsel, representation in labor matters, and facilities for purchasing oil and gasoline. Cab Services also owns 2 cabs. It employs regular, extra, and part-time, or extra-extra, drivers for those shifts when the owner-drivers are not driving, and for all shifts on the cabs owned by itself and the Association. Owners may work longer shifts than other drivers and are not required to work as regularly. They drive only their own cabs. Extra and part-time drivers may be assigned by the Employer to drive any cab available on their shift. The owners keep the receipts earned from their driving, and share the receipts of other drivers of their cabs on a pre-determined basis. The owners pay a fixed weekly amount for the general services rendered by Cab Services. The latter withholds from the receipts due them any amounts necessary to pay social security and income taxes and workmen's compensation and prepares their tax returns on an individual owner basis. Although the owners have been members of the Intervenor, they have not been included in the coverage of the contract between the Intervenor and the Employer.

At yearly shareholder meetings, a board of directors is selected from among the owner-drivers to direct the corporation's affairs and supervise the paid manager who conducts the Employer's routine business. The manager is usually an owner-driver but one who does

no driving while serving in that capacity. The manager hires, fires, and disciplines all drivers other than the owners. The latters' breaches of discipline are referred to the board for decision. Only the shareholders may force an owner to leave the association. The shareholders also reserve to themselves the right to decide disputes between the manager and the board of directors.

Although stock ownership does not alone preclude the inclusion of employee stockholders in a collective bargaining unit with other employees,[6] the Board has excluded them when their stockholding interest gives them an effective voice in the formulation and determination of corporate policy.[7] In the instant case, the owner-drivers are the sole members and stockholders of the Employer, and have an effective voice in determining policy through their selection of the directors who are, themselves, required to be owner-drivers. The stockholders also receive preferential treatment because of their status as owner-drivers, in selection of shifts, and through their freedom from the manager's exercise of disciplinary action against the other drivers. This divergence of proprietary and bargaining interest between stockholders and other drivers requires that the former be excluded from a bargaining unit of employees. Under these circumstances, we shall exclude the owner-drivers from the unit hereinafter found appropriate.

Accordingly, we find that the following employees

[6] *Everett Plywood & Door Corporation*, 105 NLRB 17.

[7] *Brookings Plywood Corporation*, 98 NLRB 794, 798; cf. *Coastal Plywood Company*, 102 NLRB 300.

constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All taxicab drivers, cab servicemen, dispatchers, and order takers of the Employer at its Minneapolis, Minnesota, establishment, including extra drivers, but excluding owner-drivers, office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible but not later than 30 days from the date below. The Regional Director for the Region where this case was heard shall direct and supervise the election, subject to Section 102.69 and 102.70 of the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Those in the military services of the United States, may vote, if they appear in person at the polls. Ineligible to vote are employees who have, since that period, quit or been discharged for cause and have not been rehired or reinstated before the election date and employees on strike who are not entitled to reinstatement. Those eligible shall vote whether they desire to be represented, for collective bargaining purposes, by Chauffeurs and Associated Workers Union; or by Minneapolis Taxicab Drivers, Livery Chauffeurs, Ambulance Drivers and

Helpers Union, Local 958, I.B.T.C.W. & H. of A.; or by neither.

Dated, Washington, D. C.

PHILIP RAY RODGERS, *Member*

STEPHEN S. BEAN, *Member*

JOHN H. FANNING, *Member*

(SEAL) NATIONAL LABOR RELATIONS BOARD

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**In the**

# Supreme Court of the United States

OCTOBER TERM, 1958

No. [redacted] 76

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, the HONORABLE LLOYD SHORETT, Judge; and TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 465, and GEORGE LANCASTER, its Secretary-Treasurer, *Petitioners,*

vs.

THE STATE OF WASHINGTON on the Relation of Yellow Cab Service, Inc., a corporation, *Respondent.*

## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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THE ARGUS PRESS, SEATTLE

In the

# Supreme Court of the United States

OCTOBER TERM, 1958

**No. 948**

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, the HONORABLE LLOYD SHORETT, Judge; and TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 465, and GEORGE LANCASTER, its Secretary-Treasurer, *Petitioners,*

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In the

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### OPINION BELOW

The opinion of the Supreme Court of Washington is reported at 153 Wash. Dec. 358, 333 P.(2d) 924 (1959), and is set forth in Appendix "A," pages 39-48, of the Petition for Writ of Certiorari.

### JURISDICTION

The jurisdiction of this court was invoked under 28 U.S.C. Sec. 1257(3), as set forth on page 2 of the Petition, and the facts as set forth therein are not in dispute.

### STATUTE INVOLVED

The statutory provisions involved are those included

in the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. Secs. 141-187.

## QUESTIONS PRESENTED

The questions as set forth on pages 2 and 3 of the Petition for Writ of Certiorari are misleading, and therefore require a restatement.

The true question is: Does the National Labor Relations Board have jurisdiction (even though no effort has been made to invoke it) over a dispute which has resulted in peaceful picketing called by a labor union against 118 separately owned small taxicab companies and their cooperative servicing organization where:

1. None of the cab companies or the servicing company is engaged in interstate commerce;

2. Only 1 10th of 1% of the total combined gross revenues of the 118 taxicab companies, a mere annual revenue of $1,436.55, is obtained from "through" taxicab business from one interstate carrier terminal to another; and

3. There is no evidence of any kind that the "dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce" in the sense in which the term "commerce" is defined in the National Labor Relations Act.

## STATEMENT OF THE CASE

Much of the statement of the case contained in the Petition is correct. There are enough errors and distortions in emphasis, however, that we submit that for a

fairer and more objective statement of the case, it would be desirable for the court to read the statement of facts as contained in those portions of the opinion of the Supreme Court of the State of Washington found in Appendix "A" to the Petition on pages 39-41, inclusive, and pages 43-44.

The court below did not decide the question as to whether the 118 separate Yellow Cab corporations and the service organization, Yellow Cab Service, Inc., should be treated as one entity in considering the jurisdiction of the National Labor Relations Board. It did not do so because it held that the total gross revenue of $1,436.55 of all 118 Yellow Cab companies derived from business in the flow of interstate commerce (or approximately $12.00 per cab) was so small that it had no appreciable effect upon interstate commerce. (See the opinion, pages 44 and 48 of the Petition.) Much of the evidence on this issue presented to the trial court is, therefore, not germane.

It should be pointed out, however, that unlike the factual situation in most of the labor cases involving cab companies, both before the National Labor Relations Board and the courts, we are dealing here with 118 entirely separate legal entities, with no interlocking directors, officers or stockholders, each of which is legally and morally entitled to bargain on its own behalf in its labor relations (Statement of Facts, 6, 11, 70, 77, 78, 82, 120, 125, 172, 183, 206-208, 235, 239-241, 247; Transcript, 38, 67).

While it is true, as the affidavit of A. H. Wenck, President of the service corporation, states, that ten

dispatchers failed to report for work, and that this caused reduced operations and delays at headquarters (Tr. 45; Statement of Facts, 76), there is no evidence of any kind that the failure of the dispatchers to cross picket lines burdened or obstructed interstate commerce or the free flow of interstate commerce. The record is completely silent with reference to any obstruction to interstate commerce, and, therefore, it must be presumed that all railroad lines, airport terminals and steamship lines are being served by Yellow Cabs or others without any burden or obstruction to the flow of interstate commerce. The failure of the respondent's dispatchers to go to work affected only its headquarters, and had nothing to do with interstate commerce.

## ARGUMENT

### 1. This case presents no unusual question of law justifying its review by this court.

Contrary to a statement contained on page 20 of the Petition, the judgment of the court below was not based upon an erroneous interpretation of the scope of the National Labor Relations Act. As the opinion indicates, the decision did not turn upon technical questions relating to the construction of the Act, but upon practical considerations (Opinion lower court, page 47 of the Petition).

Both the court below and the respondent concede that under the express language of the National Labor Relations Act, the National Labor Relations Board, under the decisions of this court, has exclusive jurisdiction in any dispute where the activity of either the

employer or the employee *either* is directly in interstate commerce *or* clearly *affects* commerce by burdening or obstructing the same or the free flow of commerce or leads or tends to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

The decision of the court below was based upon two sound conclusions, to-wit: (1) that 1/10th of 1% of the gross revenue of a cab system, amounting to less than $1,500.00 a year for the entire system, or only about $12.00 per year per cab, is so small that it could not have any appreciable effect upon interstate commerce, and (2) that there was no showing of any kind that the picketing by the union had any effect upon interstate commerce.

If there were some important question of law not heretofore decided by this court or of legal policy affecting the substantive rights of individuals, however humble, we would welcome a review of this case by the Supreme Court, but there is not.

**2. The doctrine of *de minimis non curat lex* is applicable here.**

We have reviewed all of the cases of this court and the inferior federal courts dealing with the applicability of the doctrine of *de minimis non curat lex* to cases arising under Secs. 7 and 8 of the National Labor Relations Act, as well as cases concerning themselves with ratios between local and interstate business. For the purpose of responding to the Petition, we assume that the law as determined by these cases is the law of the

land. As we will later point out, however, none of these cases is applicable on their facts to this case.

The facts are uncontroverted, having been largely stipulated, and need no review by this or any other court. The combined gross revenues of the 118 taxicab companies from all sources during the last fiscal year were $1,429,914.02. During the same fiscal year, revenues received from picking up pasengers from airports and delivering passengers to the same airports amounted to $202,880.40.

None of this gross revenue, however, is involved in this case, because it has been well settled by this court in the case of *U.S. v. Yellow Cab Co.*, 332 U.S. 218, 91 L.Ed. 2010 (1947), that the mere transportation of a passenger by taxicab from his home or hotel to a railroad station or an airport or from the latter to his home or hotel does not involve interstate commerce.

We recognize the fact that the scope of authority granted to the National Labor Relations Board exceeds that covered by the Sherman Anti-trust Act and the Fair Labor Standards Act. The Sherman Anti-trust Act was involved in the *Yellow Cab Co.* case, *supra*, and the Fair Labor Standards Act was involved in the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of *Mateo v. Auto Rental Co.*, 240 F.(2d) 831 (C.A. 9, 1947), both of which cases held that local taxicab or limousine service to or from airports does not involve interstate commerce.

Justice Murphy, in delivering the opinion of the

court in the *Yellow Cab Co.* case, *supra*, among other things said:

> "Here we believe that the common understanding is that a traveler intending to make an interstate rail journey begins his interstate movement when he boards the train at the station and that his journey ends when he disembarks at the station in the city of destination. What happens prior or subsequent to that rail journey, at least in the absence of some special arrangement, is not a constituent part of the interstate movement. The traveler has complete freedom to arrive at or leave the station by taxicab, trolley, bus, subway, elevated train, private automobile, his own two legs, or various other means of conveyance. Taxicab service is thus but one of many that may be used. It is contracted for independently of the railroad journey and may be utilized whenever the traveler so desires. From the standpoints of time and continuity, the taxicab trip may be quite distinct and separate from the interstate journey. To the taxicab driver, it is just another local fare."

Despite the dissimilarity of the jurisdiction extended under the different Congressional acts involved, the reasoning in the *Yellow Cab Co.* decision is equally applicable in this case as to whether this type of revenue involves interstate commerce. Obviously, unless this decision is to be reversed, it does not.

There is, however, as pointed out both in the decision of the lower court (see Petition, p. 44) and the Petition itself (see Petition, p. 13), included in the combined gross revenues of the 118 Seattle Yellow Cab companies a total of $1,436.55, received from taxicabs

transporting passengers in interstate commerce from one terminal to another.

Also, for the purpose of responding to the Petition, we assume that the $1,436.55 in revenues received by cabs transporting interstate passengers from one terminal to another are in the flow of interstate commerce, and that if any picketing activity of the Petitioner affects or tends to affect such flow of commerce then it would subject the dispute to the jurisdiction of the National Labor Relations Board, providing the doctrine of *de minimis lex* were not applicable.

In considering the applicability of the doctrine of *de minimis lex*, we take into account not only the fact that less than $1,500.00 in gross revenue per year is involved in revenues affecting the flow of commerce, but also the fact that 118 separately owned taxicab companies were involved, or an average annual revenue from taxicab operations affecting the flow of commerce of approximately $12.00 per taxicab company per year, and this amounts to only 1/10th of 1% of the revenue from the entire system or the average revenue of each of the 118 cabs. Unless the salutary rule that the law, and particularly this court, cannot be concerned with trifles is to be completely abandoned, it must be applied to the facts of this case.

Before discussing the cases on the subject of *de minimis lex*, we will turn next to the question as to whether there was any evidence to show that the picketing by the Petitioner affected commerce within the meaning

of the National Labor Relations Act, since the cases to be cited bear on both points.

**3. There is no evidence in this case that there was any interruption in the servicing by taxicabs of interstate passengers at any of the terminals, air, rail or steamship, or any showing that the picketing activities affecting the dispatchers would tend to interfere with the flow of interstate commerce.**

The Petitioners did not put on a single witness to show that there had been an interruption in any Yellow Cab service between the Seattle-Tacoma Airport, the King County Airport, the railroad stations and the steamship docks. The only place where the pickets were stationed was in central downtown Seattle, at the headquarters of the respondent, which prevented the dispatchers from entering the premises.

There is no evidence that any pickets were stationed at any of the airports or railroad terminals or steamship docks.

Had pickets been stationed at these interstate transportation terminals, an argument might have been made that such a labor activity would have tended to disrupt or obstruct or burden commerce or the flow of commerce. We submit that there was no testimony of any kind at the time of the hearing in the trial court even remotely bearing upon any activity of the Petitioners which affected or tended to affect commerce or the flow of commerce.

All of the federal court cases we have been able to find invoking the National Labor Relations Board's

jurisdiction because of the effect of labor practices upon interstate commerce concerned the movement either of raw materials or of manufactured products in interstate commerce. That is, the employers concerned either made substantial sales or purchases in interstate commerce, so that a work stoppage due to a labor dispute would inevitably "affect" interstate commerce by reducing the flow of materials in that commerce. But respondent does not buy and sell in interstate commerce; it is engaged, rather, in the transportation of persons entirely within the State of Washington.

Except for the minute portion of its revenues received from the transportation of passengers in interstate commerce from one terminal to another, its activities are entirely local and, at the very most, may be said to constitute a local adjunct to interstate passenger transportation. A clear distinction must be drawn between the effect upon interstate commerce of a strike against a manufacturer, distributor or retailer buying and selling goods in that commerce, and the effect of a strike against a local transportation agency. For the National Labor Relations Board to have jurisdiction in the latter type of case, the carrier must either be "in interstate commerce" to a substantial extent or the effect of the strike upon its activities must be clearly shown to burden or obstruct interstate commerce.

If it is contended that the labor dispute involving respondent's purely local transportation service somehow "affects" interstate commerce, that is a matter for proof just like any other claim of fact advanced to defeat the jurisdiction of the state courts.

This is not a matter for speculation here, as may be true in cases where a temporary restraining order has been obtained initially and continued in effect during trial so that no real appraisal of the effect of picketing on interstate commerce can be made because no picketing has taken place.

In this case, no such relief was ever granted, and Petitioners have at all times been free to picket as they chose. Such picketing had been in progress for twenty-three days by the time the trial court ruled, yet Petitioners offered no evidence that the dispute had affected respondent's local activities in such a way as to burden or obstruct the free flow of interstate commerce. It seems reasonable to assume that Petitioners would have provided such proof if it were available.

At an earlier day, such an impact could have been proved, but since the 118 operating companies are for the most part driver-owned, a strike does not have the impact it once had because the owners continue to drive their cabs. The commerce in question—the interstate movement of passengers—has not been affected, and failure of proof on that fact must be fatal to Petitioners' claim that the state courts lack jurisdiction.

In all of the recent cases by this court involving both this question and the application of the maxim *de minimis lex*, there was not only evidence of a substantial volume of business either involved in interstate commerce or affecting interstate commerce, but also direct evidence that the activity of the employer or the em-

ployee had effected or would seriously affect commerce or the flow of commerce.

Somewhere, we submit, no matter how difficult it may be, a line must be drawn. That line, we assert, surely should protect state jurisdiction against the encroachment of exclusive federal jurisdiction where 99.9% of the total revenue of a relatively small enterprise like the one in question is wholly intrastate, and only 1/10th of 1% could conceivably be held to affect commerce, as in the case at bar.

The late Chief Justice Hughes, in his opinion in the case of *Santa Cruz Fruit Packing Co. v. National Labor Relations Board,* 303 U.S. 453, 82 L.Ed. 954 (1937), stated the precise issue as follows:

> "It is also clear that where federal control is sought to be exercised over activities which separately considered are intrastate, it must appear that there is a close and substantial relation to interstate commerce in order to justify the federal intervention for its protection. However difficult in application, this principle is essential to the maintenance of our constitutional system. The subject of federal power is still 'commerce,' and not all commerce but commerce with foreign nations and among the several states. The expansion of enterprise has vastly increased the interests of interstate commerce but the constitutional differentiation still obtains. *A.L.A. Schechter Poultry Corp. v. United States,* 295 U.S. 495, 546, 79 L.ed. 1570, 1588, 55 S.Ct. 837, 97 A.L.R. 947. 'Activities local in their immediacy do not become interstate and national because of distant repercussions.' Id., p. 554.

"To express this essential distinction, 'direct' has been contrasted with 'indirect,' and what is 'remote' or 'distant' with what is 'close and substantial.' Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as 'interstate commerce,' 'due process,' 'equal protection.' In maintaining the balance of the constitutional grants and limitations, it is inevitable that we should define their applications in the gradual process of inclusion and exclusion.

"There is thus no point in the instant case in a demand for the drawing of a mathematical line. And what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialectic of suggesting doubtful and extreme cases. The critical words of the provisions of the National Labor Relations Act in dealing with the described labor practices are 'affecting commerce,' as defined (§ 2(6)). It is plain that the provision cannot be applied by a mere reference to percentages and the fact that petitioner's sales in interstate and foreign commerce amounted to 37 per cent, and not to more than 50 per cent, of its production cannot be deemed controlling. The question that must be faced under the Act upon particular facts is whether the unfair labor practices involved have such a close and substantial relation to the freedom of interstate commerce from injurious restraint that these practices may constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes."

We turn now to the principal cases of this court dealing with jurisdiction of the National Labor Relations Board in terms of volume of business and the consequent impact of labor disputes on interstate commerce. In the case of *National Labor Relations Board v. Fainblatt,* 306 U.S. 601, 83 L.Ed. 1014 (1938), this court upheld the exclusive jurisdiction of the National Labor Relations Board. The facts, however, in that case are substantially different from those here. In the *Fainblatt* case, direct interstate commerce was involved in the transportation of raw materials across state lines, to be processed in the factory of the respondents and in the transportation of the finished products to points outside the state. Justice Stone, speaking for the court, stated:

> "Here, although respondents' manufacturing business is small, employing from sixty to two hundred employees, its product is regularly shipped in interstate commerce. The Board's finding that respondents' unfair labor practices have led and tend to lead to labor disputes burdening interstate commerce and interfering with its free flow is supported by the evidence. Moreover, the Board has found specifically that respondents' unfair labor practices in attempting to prevent the unionization of their factory did in fact lead to a strike in respondents' tailoring establishment, with a consequent reduction of about 50 per cent in respondents' output. These findings are not challenged."

Therefore, the case is distinguishable on two vital points: (1) A substantial amount and percentage of the business of the company was in direct interstate commerce, and therefore the doctrine *de minimis lex*

did not apply, and (2) the strike had already reduced the company's operations by 50%, thereby directly affecting interstate commerce.

In the case of *National Labor Relations Board v. Bradford Dyeing Assoc.*, 310 U.S. 318, 84 L.Ed. 1226, (1940), this court, dealing with the question of the jurisdiction of the National Labor Relations Board, held that where half of the goods processed by the petitioner are shipped in interstate commerce and about 90% of the finished goods are also shipped in interstate commerce, the National Labor Relations Board had jurisdiction although the business of the processor constituted only a relatively small percentage *of the capacity of the entire industry.* Both percentage- and volume-wise, the business in or affecting interstate commerce was many times greater than in this case, and therefore *de minimis lex* is inapplicable.

In the most recent case of *San Diego Building Trades v. Garmon,* decided on April 20, 1959, 27 U.S. Law Week 4268, this court, in an opinion written by Justice Frankfurter, again upheld the exclusive jurisdiction of the National Labor Relations Board. This case probably goes as far as any other case in extending the doctrine of exclusive federal jurisdiction. Despite the extent to which the *Garmon* case goes in further limiting the jurisdiction of state courts, the doctrine there announced is clearly inapplicable to the case at bar.

In the *Garmon* case, the facts were that the respondent partnership, in operating their two retail lumber yards, purchased in the year before the proceeding

commenced more than $250,000.00 worth of material from outside of California for resale within the State of California, thereby being involved in interstate commerce. Furthermore, the employer in the *Garmon* case alleged that its partnership was engaged in interstate commerce.

Furthermore, the question of *de minimis lex* was not even raised, probably because under previous decisions of this court and lower federal courts smaller amounts than this, both volume- and percentage-wise, have been held not to be *de minimis lex*. There is no comparison, however, between the $250,000.00 worth of business involved in the *Garmon* case, on the one hand, and $1,500.00 in the case at bar.

For the facts with reference to the *Garmon* case, see also 353 U.S. 26, 1 L.Ed.(2d) 618, when this case was previously before this court.

In the leading companion case to the *Garmon* case, to-wit, the case of *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 1 L.Ed.(2d) 601 (1957), the facts also showed that the appellant Guss purchased materials from outside Utah in an amount a little less than $50,000.00, and also that finished products were shipped to Air Force bases, one within Utah and the other outside, so that interstate commerce was clearly held to be involved. No comparable factual situation appears in this case. Furthermore, the appellant Guss agreed that he was engaged in commerce within the meaning of the National Labor Relations Act.

On page 34 of their brief, Petitioners cite the case of

*New York State Labor Relations Board v. Wags Transportation System, Inc.*, 130 N.Y.S.(2d) 731, aff'd 284 App. Div. 883, 134 N.Y.S.(2d) 603 (1954), as being in conflict with the decision of the lower court in this case. The facts in the two cases are so vastly different that it would be completely unrealistic to reach the same legal result in both cases.

In the *Wags* case, the court was dealing with a huge volume of taxicab traffic, affecting the terminals of the New York Central Railroad Co., New Haven Railroad and Pennsylvania Railroad Co., the New York airports and the city's numerous trans-Atlantic passenger steamships. It was dealing with literally millions of passengers, both traveling abroad and to other states in the direct flow of international and interstate travel. The court was careful to point out the extraordinary impact which the taxicab business in the City of New York had upon such flow of passenger traffic in international and interstate commerce, and how a strike against the Terminal System taxicabs would seriously impair the flow of traffic in and out of New York. The court clearly found upon the detailed and imposing facts received in evidence that there was an immediate and overwhelming threat of obstruction to interstate passenger traffic. There was no such evidence presented in this case, and the lower court's holding was based in part upon the fact that there was no such evidence. This alone is sufficient to distinguish it from the *Wags* case.

In all of the Federal Circuit Court cases dealing with the applicability of the doctrine *de minimus lex*, and the question as to whether commerce is affected, in order to

invoke National Labor Relations Board jurisdiction, the percentage and volume of commerce was much greater than in this case, and there was direct and substantial evidence that the labor activity affected commerce.

Only one more of these cases warrants any attention here. This is the case of *J. L. Brandeis & Sons v. National Labor Relations Board*, 142 F.(2d) 977 (C.A. 8, 1944). This involved a large, ten-story department store in Omaha, Nebraska. During the last fiscal year, it purchased merchandise outside of Nebraska for resale in Omaha at a cost of more than $3,700,000.00. It had mail orders from outside Nebraska in the sum of $20,799.00, and it delivered to out-of-state customers approximately 8,900 packages. It also did some advertising outside of the state.

Citing, among other cases, that of *Santa Cruz Fruit Packing Co., supra*, the court correctly held that the National Labor Relations Act cannot be applied by a mere reference to percentages. It held that:

> "When the unfair labor practice involved is found to have *such a close and substantial relation* to the free flow of interstate commerce that the practice tends to obstruct that commerce, the jurisdiction of the Board to apply the preventive remedies of the Act is undoubted." (Emphasis supplied)

As we have said above, a line must be drawn somewhere. Certainly, as Chief Justice Hughes stated in the *Santa Cruz Fruit Packing Co.* case, cited *supra*,

> "The question that must be faced under the Act upon particular facts is whether the unfair labor

practices involved have such a close and substantial *relation to the freedom of interstate commerce* from injurious restraint that these practices may constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes." (Emphasis supplied)

To assert that $12.00 of business per annum for a single taxicab company and $1,500.00 per annum collectively for 118 taxicab companies joined in a cooperative operating system might have a substantial effect upon the flow of interstate commerce is so ludicrous as to warrant no serious consideration. This is particularly true in the complete absence of any evidence either of picketing at any of the transportation terminals affecting interstate commerce in the City of Seattle or any evidence of any effect of the strike or picketing in the obstruction of interstate commerce. This is why the lower court properly held that interstate commerce had not been affected to any appreciable extent.

In a case like this, unless the reasoning of the late Chief Justice Hughes on the need for some balance between the assertion of federal, as distinguished from state, jurisdiction is to be rejected, then we assert that the jurisdiction of the Supreme Court of the State of Washington should not be set aside where it, after a careful consideration of all of the detailed facts in the case, found, unlike the situation in the *Wags* case, that there was no evidence that interstate commerce had been affected appreciably.

**4. The latest case decision of the National Labor Relations Board does not conflict with the judgment of the court below.**

This was the 1954 decision in the *Checker Cab Co.* case, 110 N.L.R.B. 683, cited in Petitioners' brief at page 32. The Board there held that "taxicab companies, by their very nature, perform local operations and are essentially local entities." This was the last litigated case of the National Labor Relations Board dealing with its jurisdiction in taxicab cases, except for the recent decision of the Board in an elections case quoted on page 58 of the Petition. We will deal with this case presently.

Spurred on by the decision in the *Guss* case, *supra*, and despite its prior holding in the *Checker Cab Co.* case that the taxicab company business is purely local in character, the National Labor Relations Board, as Petitioners point out, announced a change in exercise of jurisdiction on Thursday, October 2, 1958. See Appendix "C," page 56, of the Petition. It is significant, however, that one of the two new standards set forth in this press release is Standard No. 4, which reads as follows:

> "*Instrumentalities links and channels of Interstate Commerce*: $50,000 from interstate (or linkage) part of enterprise, or from services performed for employers in commerce."

The Petitioners must have considered this relevant to the case at bar, since it is one of the two standards which are printed in the Petition, the other inapplicable standards having been deleted. This clearly indi-

cates to us that the Board considered that any volume of business affecting commerce or the flow of or "links and channels" of interstate commerce amounting to less than $50,000.00, is too small to justify invoking the jurisdiction of the Board. If, spurred on by the *Guss* case, the National Labor Relations Board, as an agency of Congress, has come to the conclusion that a flow of less than $50,000.00 in commerce is too small, then we certainly submit that the doctrine of *de minimis lex* should be applied to a volume of $1,500.00 in this case.

Commencing on page 58 of its Petition, the Petitioner cites the case of *Cab Services, Inc., d/b/a Red and White Cab Company, and Chauffeurs and Associated Workers Union,* 123 N.L.R.B. No. 19. This case is clearly distinguishable.

In the first place, it primarily deals with the question as to whether the Cab Service, Inc., and the 48 taxicabs included in the system should be treated as a unit for the purpose of establishing Board jurisdiction. This question is not in issue in this case as far as this Petition is concerned, since it was not decided by the lower court. Furthermore, as the footnote on page 58 of the Petition indicates, all of the parties in the *Cab Services* case agreed that the operations of the corporation and the association constituted a single employer, which is not the case here.

In the second place, there was direct evidence of the purchase of gas and oil in the employer's business operations to the extent of $60,000.00 per year from out-

of-state sources. There was no such evidence in this case.

In the third place, this involves the question of the Board's jurisdiction over an election and was not a picketing case.

In the fourth place, it does not deal with the question of *de minimis lex* or the question as to whether as small an amount of business in interstate commerce as is involved in this case would affect or tend to affect commerce.

These questions were not even discussed, and none of the cases cited in the Petitioners' brief or in this brief are cited.

**5. The judgment of the court below does not conflict with any position taken by the Federal Mediation and Conciliation Service.**

On page 36 of the Petition, the Petitioners assert that the Federal Mediation and Conciliation Service "made a determination that the activities of the Seattle Yellow Cab system 'affected commerce' and that the strike of Local 465 threatened to cause a 'substantial interruption in commerce'." It made no such determination. These words are figments of the imagination of the Petitioners. The only record citation given is Tr. 12-13, 28 and St. 117-123. The only evidence was that a representative of the Federal Mediation and Conciliation Service held a couple of informal meetings with representatives of the Petitioners and the respondent, at which no progress was made (St. 117-123).

## CONCLUSION

No possible good will be served by taking the time of this court to review a unanimous decision of the Supreme Court of the State of Washington, where no disputed question of law is involved, and where no appreciable effect upon interstate commerce is present. We submit that the Petition should be denied.

Respectfully submitted,

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# In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 76

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, THE HONORABLE LLOYD SHORETT, JUDGE; AND TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 465, AND GEORGE LANCASTER, ITS SECRETARY-TREASURER, PETITIONERS

*v.*

THE STATE OF WASHINGTON ON THE RELATION OF YELLOW CAB SERVICE, INC.

*ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON*

## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

### OPINIONS BELOW

The findings of fact, conclusions of law, and oral opinions of the Superior Court for King County (R. 40–43) are unreported. The opinion of the Supreme Court of the State of Washington (R. 60–67) is reported at 153 Wash. Dec. 358, 333 P. 2d 924 (1959).

### JURISDICTION

The judgment of the state Supreme Court was entered on February 10, 1959 (R. 68). The petition for

a writ of certiorari was filed on May 25, 1959, and was granted on June 29, 1959. The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

## STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Sec. 151, *et seq.*), are as follows:

### DEFINITIONS

SEC. 2. When used in this Act—

* * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

### PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257) are as follows:

> SEC. 701. (a) Section 14 of the National Labor Relations Act, as amended, is amended by adding at the end thereof the following new subsection:
>
> "(c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.
>
> "(c)(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction."

## QUESTION PRESENTED

The interest of the National Labor Relations Board as *amicus curiae* is limited to a single question raised by petitioners, namely, whether the operations of respondent Yellow Cab system affect commerce within the meaning of Section 2(6) and (7) of the National

Labor Relations Act and hence fall within the statutory jurisdiction of the Board.

## STATEMENT

1. *The business of the Seattle Yellow Cab system.*—Until 1955, the Yellow Cab Company, a partnership, operated a fleet of some 120 taxicabs in the city of Seattle, Washington (R. 9, 31, 61, 73–74). During 1955 and 1956, however, the Yellow Cab Company executed a plan of liquidation (a) by selling its "color rights," exclusive franchises and all its facilities and equipment other than taxicabs to Yellow Cab Service, Inc., and (b) by selling its taxicabs, subject to the terms of conditional sales contracts, to 118 corporations (R. 9, 18, 31, 50–51, 61, 73–74, 87–88, 118–119, 240–254). The Yellow Cab Company organized the Service Company to assure payment from the purchasing corporations and to service them (R. 17, 31–32, 41–42, 52, 61, 74–76).

The conditional sales contracts provided, *inter alia*, for the sale of four shares of Service Company stock to each purchaser of a taxicab and rendered the sale of the taxicabs and the stock subject to the terms of an agreement executed by the Yellow Cab Company, the Service Company and the purchasers (R. 9–10, 14–22, 23, 50–51, 74, 77–79). In accordance with the terms of this agreement, the board of directors of the Service Company, which is composed of three representatives of the Yellow Cab Company and two representatives of the purchasers, adopts rules and regulations to govern the conduct of the Yellow Cab business (R. 19, 32, 42, 54, 99–104,

133–136). The presidents of the purchasing corporations, who are known as owner-operators, also adopt rules for the conduct of the business, and they have elected a committee, two of the members of which are directors of the Service Company, to act for them between their meetings (R. 33, 53, 55, 62, 94, 97–98, 186, 198, 219–221, 256–258).

The 120 Yellow taxicabs, which have been licensed jointly in the names of the Service Company and the corporate purchaser involved, are driven by the owner-operators and by employee-drivers (R. 2, 53, 106, 173, 177–178, 218–219, 223). The personnel manager of the Service Company hires, discharges and disciplines the employee-drivers and arranges their work schedules (R. 33, 53, 62, 102, 105–106, 170–174).

The Service Company provides dispatching, "starter," advertising, bookkeeping and accounting services for the corporate purchasers (R. 2–3, 20, 29, 42, 52–53, 61, 88–91, 101–102, 178–179). All drivers turn in their gross receipts to the Service Company, which credits them to the account of the purchaser of the taxicab involved. From these funds the Service Company deducts and pays the wages of the employee-drivers and all other debts owed by each purchaser. The balance is paid weekly to the owner-operators (R. 32–33, 42, 53–54, 88–90, 181– 182, 184–185, 190–192, 219).

The Yellow Cab Company has assigned to the Service Company franchises which grant Yellow taxicabs the exclusive right to pick up passengers arriv-

ing at the Seattle railroad terminals, airports and steamship docks, all of which service interstate carriers of passengers and baggage. The franchise agreements also require the holder to provide a sufficient number of taxicabs to serve incoming passengers (R. 12, 25, 57, 61, 63–64, 81–86, 249–254). Pursuant to contracts with the railroads operating out of the two Seattle stations, Yellow cabs exclusively transfer "through-passengers" and baggage between the stations and the docks upon the presentation by the passengers of transfer coupons issued by the railroads (R. 41, 57, 61, 64, 80–82, 84–86, 240–248). In addition, Yellow cabs transport passengers to the railroad stations, airports and docks (R. 40–41, 57, 63–64, 83–84). The taxicabs do not operate across state lines (R. 63, 114).

During the fiscal year ending June 30, 1958, the gross receipts of the Yellow Cab system were $1,429,914.02. Of this amount, $156,062.40 was earned from picking up passengers arriving at the airports, $46,818.00 from transporting passengers to the airports, and $1,436.00 from transferring "through-passengers" and baggage between the railroad stations and the docks (R. 36–37, 40–41, 57, 63–64, 108–112, 258).

2. *The labor dispute giving rise to these proceedings.*—At the time of the formation of the Service Company by the Yellow Cab Company, the Taxicab Drivers and Chauffeurs Local Union No. 465 was the bargaining representative of the drivers and dispatchers, and a collective bargaining agreement was

in force. After the expiration of this contract in June 1956, representatives of the Service Company and the owner-operators negotiated with Local 465 an agreement covering the dispatchers and employee-drivers, which was signed by the Service Company and the corporate purchasers. This contract was terminated on March 26, 1958, effective June 1, 1958. Negotiations for a new contract were unsuccessful, and on September 16, 1958, the Local called a strike and began to picket the Yellow Cab garage and office (R. 3–4, 9–11, 23–24, 34, 42, 55–56, 58, 62, 76–78, 128–132, 134–135, 165–166, 198–200, 202–205, 223).

3. *Proceedings in the courts below.*—On September 23, 1958, the Service Company filed a complaint in the Superior Court for King County against the Local and the International Brotherhood of Teamsters. The complaint sought a permanent injunction restraining the Local and International from picketing the place of business of the Service Company on the grounds that (1) the picketing was unlawful since the Service Company was willing to sign a contract with the Local covering the dispatchers, and hence no labor dispute existed between the Company and the Local, and (2) the picketing was causing irreparable damage to the Company (R. 1–5). The answer of the Local alleged that the court had no jurisdiction over the suit inasmuch as the Service Company and the purchasing corporations constituted a single enterprise, which was engaged in an industry "affecting commerce" within the meaning of the National Labor Relations Act, and the strike and picket-

ing of the Local were protected activities within the meaning of the Act (R. 7–13).[1]

At the conclusion of a trial on the merits, the court ruled that the Seattle Yellow Cab system was a single integrated business, that the business "affected commerce," and that the case presented a labor dispute over which the National Labor Relations Board has exclusive jurisdiction (R. 40–43).

Upon an application by the Service Company for an alternative writ of mandate, the Supreme Court of Washington held that the National Labor Relations Board does not have jurisdiction over the operations of the respondent taxicab system (R. 60–67). Accepting, without deciding, the "union's hypothesis" that the Yellow Cab Service and operating corporations constituted a single entity, the court decided that (a) the system does not constitute "such an integral step in the interstate movement of passenger traffic as to be considered as being in interstate commerce" (R. 67), (b) even if the transportation of passengers from railroad stations to steamship docks be viewed to be in interstate commerce, it is of a *de minimis* character, and (c) "whatever unfair labor practices may be present in this case can [not] possibly be said to be 'burdening or obstructing commerce'" because "[t]here is no testimony in the record that this strike has impaired taxicab service to or from the railroad terminals, airports, and docks, and hence no evidence of any effect upon interstate commerce sufficient to justify application of the Na-

[1] The International was not served and did not appear.

tional Labor Relations Act" (R. 66). The writ of mandate was granted, and the trial court was directed to assume jurisdiction of the suit for injunctive relief (R. 67).

## SUMMARY OF ARGUMENT

The decisions of this Court have made it abundantly clear that the statutory jurisdiction of the National Labor Relations Board extends to any enterprise, including intrastate enterprises, where a stoppage of business operations resulting from industrial strife would tend to impede or disrupt the free flow of interstate commerce in its normal channels. Judged by this test, the operations of the Seattle Yellow Cab system affect commerce and clearly fall within the coverage of the National Labor Relations Act. Transportation of "through-passengers" between the railroad stations and the docks by the Seattle Yellow cabs "is clearly a part of the stream of interstate commerce." *United States* v. *Yellow Cab Co.*, 332 U.S. 218, 228–229. Moreover, the transportation of incoming passengers from the railroad stations and airports, which under its franchises belongs exclusively to the Yellow Cab system, establishes it as an important, if not an indispensable, adjunct of interstate travel, and the transportation of passengers from various localities in the city to the railroad stations and airports greatly facilitates interstate travel. Even assuming that such service could not be viewed as "in interstate commerce," it directly "affects commerce" in a very real and practical sense.

It is well settled that local transit concerns are subject to the Board's jurisdiction since they provide an important mode of travel for employees of concerns engaged in commerce and any disruption of such transportation would tend to affect the interstate operations of the latter. By the same token, the Board's jurisdiction extends to the Yellow Cab system. Indeed, in view of the exclusive arrangements which exist between the system and the railroads and airports for transporting incoming passengers and "through-passengers," the impact on interstate commerce of a strike or work stoppage involving the system would perhaps be even more direct and immediate than in the case of a local transit company. Moreover, since such exclusive franchise arrangements are not uncommon in the taxicab transportation industry, the immediate situation "is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce." *Polish National Alliance* v. *National Labor Relations Board*, 322 U.S. 643, 648. "Congress * * * left it to the Board to ascertain whether proscribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress." *Ibid.* Under its present jurisdictional standards, the Board exercises its statutory jurisdiction over taxicab enterprises similar to the Yellow Cab system. And Congress has recently, in effect, incorporated these standards into Section 14(c)(1) of the Act and thus not only implicitly confirmed the Board's statutory power over taxicab companies, but also expressly re-

quired the Board to assert jurisdiction over such enterprises as meet its current standards.

The court below, in resting its decision on the ground that the taxicab system is not engaged "in commerce," overlooks the fact that the coverage of the Act extends beyond activities "in commerce" and includes activities which "affect commerce." Similarly, the court below erred in giving weight to the fact that the labor dispute has not been shown to have disrupted service to and from the various terminals; "the Board's jurisdiction can attach, as here, before actual industrial strife materializes to obstruct that commerce." *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U.S. 318, 326. Finally, *United States* v. *Yellow Cab Co.*, 332 U.S. 218, on which the court below relied, affords no support for the court's ruling.

## ARGUMENT

### THE OPERATIONS OF THE SEATTLE YELLOW CAB SYSTEM "AFFECT COMMERCE" WITHIN THE MEANING OF SECTION 2(6) AND (7) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The provisions of the National Labor Relations Act and the principles which define and govern the scope of the statutory jurisdiction vested in the National Labor Relations Board are familiar to the Court and need be recapitulated here only briefly.

Section 10(a) of the Act empowers the Board to prevent unfair labor practices "affecting commerce." Section 2(7) defines the term "affecting commerce" to mean "in commerce, or burdening or obstructing

commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." It is settled that, in this Act, Congress "in order to protect interstate commerce from adverse effects of labor disputes has undertaken to regulate all conduct having such consequences that constitutionally it can regulate. * * * Congress * * * left it to the Board to ascertain whether proscribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress." *Polish National Alliance* v. *National Labor Relations Board*, 322 U.S. 643, 647–648. Accordingly, the Board's jurisdiction extends to any enterprise, including intrastate enterprises, where a stoppage of business operations resulting from industrial strife would tend to impede or disrupt the free flow of interstate commerce in its normal channels. *Ibid.*; *National Labor Relations Board* v. *Jones & Laughlin*, 301 U.S. 1, 36; *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601, 607; *Santa Cruz Co.* v. *National Labor Relations Board*, 303 U.S. 453, 467; *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U.S. 318, 326; *National Labor Relations Board* v. *Denver Bldg. Council*, 341 U.S. 675, 684; cf. *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U.S. 219, 234, 236; *United States* v. *Women's Sportswear Association*, 336 U.S. 460, 464.

The trial court found, and the court below assumed, that the Service Company and the 118 purchasing corporations which comprise the Seattle Yellow Cab

system constitute and function as an integrated business enterprise. The record shows that the system is the holder of franchises which give its taxicabs the exclusive right to pick up passengers arriving at the railroad terminals, airports and steamship docks in the city of Seattle. Under contract with the railroads operating out of the two stations, Yellow cabs also exclusively transfer "through-passengers" and baggage where the railroad, as is often the case, has contracted with the passenger to supply between-station transportation. The gross receipts of the cab system exceeded one million dollars in the fiscal year ending in June 1958. Of this amount more than $200,000 was earned from transporting passengers to and from the airports and "through-passengers" between railroad stations and the docks. Although the record does not show the revenue earned by the system from the transportation of passengers to and from the railroad stations and the docks, it is a fair inference that the amount is substantial.

It is evident, we think, that the operations of the Yellow Cab system affect interstate commerce within the meaning of the Act. The transportation of "through-passengers" between the different railroad stations and the docks "is clearly a part of the stream of interstate commerce." *United States* v. *Yellow Cab Co.*, 332 U.S. 218, 228–229. If it were necessary to rely on this factor alone, it would suffice to bring the taxicab system within the coverage of the Act.[2] But

[2] The transportation of such "through-passengers" accounted for approximately $1500 of the system's revenues. The court below treated this as *de minimis* in character. But *de minimis*

there are additional and more substantial links between the taxicab system and the movement of passengers in commerce. The transportation of incoming passengers from the railroad stations and airports, which under its franchises belongs exclusively to the taxicab system, establishes it as an important, if not an indispensable, adjunct of interstate travel. Cf. *United States* v. *Capital Transit Co.*, 325 U.S. 357, reversed, 338 U.S. 286. And the transportation of passengers from various localities in the city to the railroad stations and airports greatly facilities interstate travel. It is common knowledge that in many metropolitan areas, like Seattle, thousands of travelers must and do depend upon and utilize taxicab service, such as the Yellow Cab system furnishes, to transport them and their baggage to and from and between railroad stations, airports, and, where there are navigation facilities, docks. One can readily visualize the hardships and inconvenience which interstate travelers would experience from a disruption of the taxicab service. Curtailment of the service would necessarily tend to cast a burden on interstate travel. Even assuming that such service could not be viewed as "in interstate commerce," in a very real and practical

---

"in the law has always been taken to mean trifles—matters of a few dollars or less." *National Labor Relations Board* v. *Suburban Lumber Co.*, 121 F. 2d 829, 832 (C.A. 3), certiorari denied, 314 U.S. 693. Cf., also, *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 181 F. 2d 34, 36, 37, aff'd, 341 U.S. 694, where the Second Circuit, speaking through Judge Learned Hand, held that a labor dispute involving a New York contractor whose work on the construction of a particular house in Connecticut was valued at only $325, fell within the Board's statutory jurisdiction.

sense it directly "affects commerce."[3] *New York State Labor Relations Board* v. *Wags Transportation System,* 130 N.Y.S. 2d 731, 736 (Sup. Ct.), aff'd, 134 N.Y.S. 2d 603 (App. Div.).

The coverage of the Act is not, of course, limited to activities in "interstate commerce." It extends to operations which "affect commerce." The distinction, which the court below has overlooked, is important. "In so describing the range of its control, Congress is not indulging stylistic preferences; it is mediating between federal and state authorities and deciding what matters are to be taken over by the central Government and what to be left to the States * * *. And so in this Act, unlike some federal regulatory measures * * * Congress has explicitly regulated not merely transactions or goods in interstate commerce but activities which in isolation might be deemed to be merely local but in the interlacings of business across state lines adversely affect such commerce * * *. Congress therefore left it to the Board to ascertain whether proscribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress." *Polish National Alliance* v. *National Labor Relations Board,* 322 U.S. 643, 647–648.

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[3] It may also be noted that taxicab systems often purchase vehicles and incidental supplies, such as tires, gas and oil, which come from out-of-state sources. See, *e.g., Cab Services, Inc.*, 123 NLRB No. 19. Any disruption of their operations by industrial strife would, of course, tend to have an effect on the interstate movement of such equipment and supplies, which undoubtedly are substantial in volume.

It is well settled that local transit concerns are subject to the Board's jurisdiction. The basis of the Board's jurisdiction over such enterprises is that a disruption of their services, as a result of labor strife, would seriously hinder and impede the operation of other businesses engaged in interstate commerce whose workers depend on the transit system's cars and buses for transportation. *Amalgamated Association of Street, Electric Railway, etc. Employees* v. *Wisconsin Employment Relations Board*, 340 U.S. 383; *National Labor Relations Board* v. *Baltimore Transit Co.*, 140 F. 2d 51, 53–54 (C.A. 4), certiorari denied, 321 U.S. 795; *National Labor Relations Board* v. *Fort Worth Transit Co.*, 187 F. 2d 792 (C.A. 5); *National Labor Relations Board* v. *El Paso-Ysleta Bus Line, Inc.*, 190 F. 2d 261 (C.A. 5).

By the same token, the Board's jurisdiction extends to the taxicab system in the instant case. Indeed, in view of the exclusive arrangements which exist between the system and the railroads and airports for transporting incoming passengers and "through-passengers," the impact of a strike or work stoppage involving the cab system on interstate commerce would perhaps be even more direct and immediate than in the case of a local transit company. Moreover, it should be noted that the arrangements which exist here are not uncommon in the taxicab transportation system in the country.[4] The immediate situation "is representative of many others throughout the country, the total incidence of which if left

[4] *New York State Labor Relations Board* v. *Wags Transportation System*, 130 N.Y.S. 2d 731, 736 (Sup. Ct.), aff'd, 134 N.Y.S. 2d 603 (App. Div.).

unchecked may well become far-reaching in its harm to commerce." *Polish National Alliance, supra,* 322 U.S. at 647–648.

The Board presently exercises its statutory jurisdiction over taxicab enterprises similar to the Yellow Cab system. Although at times during its history the Board has refrained from asserting its statutory power over such enterprises, the abstention has been prompted by policy considerations rather than by any doubt of the existence of the power.[5] Power is not,

[5] The history of the Board's practice in this respect may be summarized as follows:

Prior to 1950, the Board exercised jurisdiction over taxicab companies which did some business across state lines. *Taxicabs of Cincinnati, Inc.*, 82 NLRB 664; *Yellow Cab Co.*, 88 NLRB 282; *Hickey Cab Co.*, 88 NLRB 327. During 1950, the Board declined to assert jurisdiction over particular taxicab companies operating within the confines of a single state, on the ground that their operations, while "not entirely unrelated to interstate commerce," were "essentially local in character," and it "would not effectuate the policies of the Act to assert jurisdiction" in the individual cases. *Yellow Cab Co.*, 90 NLRB 1884; *Skyview Transportation Co.*, 90 NLRB 1895; *Brooklyn Cab Corp.*, 90 NLRB 1898. However, before the end of 1950 the Board modified its position and began to exercise jurisdiction over local taxicab companies which serviced interstate passengers. *Red Cab, Inc.*, 92 NLRB 175. Noting that the taxicabs pursuant to exclusive franchises serviced terminals handling interstate traffic, the Board found that the operations of the cabs might properly be regarded as "an essential link" in the services performed by the interstate carriers. *Id.* at 177. See also *Skyview Transportation Co.*, 92 NLRB 1664, 1665; *Rite Rate Cab Co.*, 95 NLRB 1302, 1304–1305; *Cashman Auto Co. and Red Cab Co.*, 98 NLRB 832, 833, enforced, 200 F. 2d 412 (C.A. 1); *Charman Service Corp.*, 99 NLRB 534.

From 1952 to 1954, jurisdiction was asserted over local taxicab companies if the company involved (1) was either the sole concern in the area serving instrumentalities of commerce or was licensed by such an instrumentality and (2) derived a sub-

of course, extinguished by the mere failure to exercise it nor does the lack of consistency in the Board's policy argue against the existence of the power. *United States* v. *American Union Transport*, 327 U.S. 437, 454–455; *United States* v. *Morton Salt Co.*, 338 U.S. 632, 647–648; *Virginian Railway* v. *United States*, 272 U.S. 658, 665–666. Under its current jurisdictional standards, adopted in 1958, the Board asserts its statutory power over taxicab companies which either have a gross volume of business of $500,000 or more or derive $50,000 or more of their revenue from interstate operations or from services such as the Yellow Cab system renders under its exclusive franchises with the railroads and airports.[6] Under either test, the Board would assert jurisdiction over the Seattle Yellow Cab system. *Cab Services Inc.*, 123 NLRB No. 19.

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stantial part of its income from providing the service. *Cambridge Taxi Co.*, 101 NLRB 1328; *New Taxi Dispatch Corp.*, 101 NLRB 1327; *Taxi Transit Co.*, 102 NLRB 45; *Yellow Cab Co.*, 103 NLRB 394; *Checker Taxi Co.*, 107 NLRB 266. During the period from 1954 to 1958, the Board declined to exercise jurisdiction over any local taxicab companies. *Checker Cab Co.*, 110 NLRB 683; *Union Cab Co.*, 110 NLRB 1921. In 1958, the Board established its current standards under which jurisdiction is again asserted over local taxicab companies.

[6] The applicable Board standards were announced by the Board in a press release dated October 2, 1958, as follows (Press Release of National Labor Relation Board, No. 576, Oct. 2, 1958):

> 4. *Instrumentalities, links and channels of Interstate Commerce:* $50,000 from interstate (or linkage) part of enterprise, or from services performed for employers in commerce.
>
> * * * * *
>
> 6. *Transit systems:* $250,000 gross volume.[2]
>
> [2] Except taxicabs, as to which the retail ($500,000 gross volume of business) test shall apply.

Congress has recently, in effect, incorporated these and other jurisdictional standards of the Board into the Act. Section 14 of the Act, as amended by Section 701(a) of the Labor-Management Reporting and Disclosure Act of 1959, which permits state authorities to assert jurisdiction over labor disputes over which the Board declines to assert jurisdiction, expressly provides that "the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959." The mandate which Congress has thus addressed to the Board not only implicitly confirms the Board's statutory power over such enterprises as taxicab companies but also requires its assertion over such enterprises as meet the current jurisdictional criteria.[7]

The decision below rests principally on three grounds: (a) the Yellow Cab system is not engaged "in commerce," (b) there is no showing that the labor dispute has impaired taxicab service to and from the railroad terminals, airports and docks, and (c) the decision of this Court in *United States* v. *Yellow Cab Co.*, 332 U.S. 218. The first of these grounds, as we have shown, overlooks the fact that the coverage of the statute extends beyond activities "in commerce" and includes activities which "affect commerce." Similarly, the court below is in error in giving weight to the circumstance that the labor dispute has not been shown to have disrupted trans-

[7] Explaining the amendment, Senator Kennedy stated "The Board can change its jurisdictional standards, and can, at any time, assume more jurisdiction; but it cannot assume less jurisdiction than it does today." 105 Cong. Rec. (Daily Ed.) 16417.

portation service to and from the various terminals. The absence of such a showing merely suggests, at best, that substitute facilities may have been brought into play. But it is well settled that this factor is immaterial for purposes of determining whether commerce has been affected within the meaning of the Act. Where the effect of a labor dispute would be an obstruction to commerce, the existence of alternative enterprises which might take over the halted operations is no bar to the Board's jurisdiction. For even though this effect might be dissipated by increased activity in competing enterprises, "the Board's jurisdiction can attach, as here, before actual industrial strife materializes to obstruct that commerce." *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U.S. 318, 326. See also *Virginian Railway Co.* v. *System Federation* No. 40, 300 U.S. 515, 557; *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U.S. 219, 236.

Finally, this Court's decision in *Yellow Cab, supra,* affords no support for the ruling below. Indeed, as we have already pointed out, *supra*, p. 13, the part of that decision (332 U.S. at pp. 228–229) dealing with the transportation of "through-passengers" supports the Board's jurisdiction in the instant case. The court below presumably relied on the views expressed by this Court in Part III of the opinion. There the Court concluded that "when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation.

And a restraint on or monopoly of that general local service, without more, is not proscribed by the Sherman Act." 332 U.S. at 233. The Court did not say that the activities of the local cab companies, particularly where, as here, they have exclusive franchises for transporting passengers from interstate terminals (332 U.S. at p. 231), could have no effect on commerce and thus were beyond Congressional power to regulate commerce. On the contrary, the Court expressly disclaimed a purpose "to establish any absolute rule that local taxicab service to and from railroad stations is completely beyond the reach of federal power or even beyond the scope of the Sherman Act. * * * A conspiracy to burden or eliminate transportation of passengers to and from a railroad station where interstate journeys begin and end might have sufficient effect upon interstate commerce to justify the imposition of the Sherman Act or other federal laws resting on the commerce power of Congress." (*Id.* at 232–233.) The decision of the Court rested on the proposition that since the complaint alleged no more than a conspiracy to monopolize a local business (*i.e.,* the casual transportation of passengers to and from railroad terminals), it failed to state a cause of action under the Sherman Act. That is, it was not enough for purposes of that statute to show that the taxicab companies had engaged in monopolistic practices or restraints as such; in addition, these practices or restraints had to be affirmatively related to some part of interstate commerce itself. Under the Labor Act, however, the jurisdictional test does not turn on the actually alleged and demon-

strated effects on commerce of the offending action but on the nature of the employer's business and the potential threat to interstate commerce in the event of a work stoppage.[8]

## CONCLUSION

For the foregoing reasons it is concluded that the ruling of the court below that the National Labor Relations Board does not have jurisdiction over the Seattle Yellow Cab system is erroneous.

Respectfully submitted.

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OCTOBER 1959.

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[8] The court below also relied on *Mateo* v. *Auto Rental Co.*, 240 F. 2d 831 (C.A. 9), which dealt with the applicability of the Fair Labor Standards Act to airport limousine drivers. There is a serious doubt whether the *Mateo* decision is correct. Cf. *Airlines Transportation* v. *Tobin*, 198 F. 2d 249 (C.A. 4). But, in any event, as is apparent on the face of the Ninth Circuit's opinion, any reliance upon that case for purposes of the coverage of the National Labor Relations Act is misplaced. The coverage of the Fair Labor Standards Act, unlike the Labor Act, extends only to employees "engaged in commerce or in the production of goods for commerce" (52 Stat. 1062, 29 U.S.C., Sec. 206).

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No. 76

# In the Supreme Court of the United States

OCTOBER TERM, 1959

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, the HONORABLE LLOYD SHORETT, Judge; and TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION No. 465, and GEORGE LANCASTER, its Secretary-Treasurer, *Petitioners,*

vs.

THE STATE OF WASHINGTON on the Relation of Yellow Cab Service, Inc., a corporation; *Respondent.*

ON A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

## BRIEF FOR THE PETITIONERS

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In the

# Supreme Court of the United States

OCTOBER TERM, 1959

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, the HONORABLE LLOYD SHORETT, Judge; and TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 465, and GEORGE LANCASTER, its Secretary-Treasurer, *Petitioners*,

vs.

THE STATE OF WASHINGTON on the Relation of Yellow Cab Service, Inc., a corporation, *Respondent*.

No. 76

ON A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

## BRIEF FOR THE PETITIONERS

### OPINIONS BELOW

The oral opinion of the Superior Court for King County, Washington (R. 40-43), is unreported. The opinion of the Supreme Court of Washington (R. 60-67) is reported at 153 ~~Wash. Dec. 358,~~ 333 P.2d 924 (1959).

### JURISDICTION

On February 10, 1959, the Supreme Court of Washington entered a judgment granting a writ of mandate compelling the Superior Court for King County, the

Honorable Lloyd Shorett, judge, to assume jurisdiction over a cause of action brought by respondent Yellow Cab Service, Inc., a Washington corporation, against petitioner Taxicab Drivers and Chauffeurs Local Union No. 465, and George Lancaster, its secretary-treasurer, seeking an injunction restraining Local 465 from picketing the premises of the corporation (R. 68-69). By order of Associate Justice William O. Douglas, the time for filing a petition for certiorari was extended to and including May 25, 1959 (R. 280).

Petitioners filed a petition for certiorari on May 25, 1959, and it was granted on June 29, 1959 (R. 280).

The jurisdiction of this court is based upon 28 U.S.C. Sec. 1257 (3), since rights, privileges and immunities specially set up and claimed under the statutes of the United States have been denied.

## STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are those included in the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. Secs. 141-187. Pertinent sections of the Act are as follows:

"Short Title and Declaration of Policy

* * * * * * * * * *

"Section 1(b) . . . It is the purpose and policy of this Act, in order to promote a full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their

relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

* * * * * * * * * * *

"Definitions

"Section 2. When used in this Act—

* * * * * * * * * * *

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States. . . .

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * * * * * * * *

"Prevention of Unfair Labor Practices

"Section 10(a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. . . ."

## QUESTION PRESENTED

Does the National Labor Relations Board have jurisdiction over a strike, and peaceful picketing incident thereto, called by a labor union against a taxicab company which does not operate across state lines but which does an annual gross business of $1,429,914.02; which possesses franchises by which it is granted exclusive

rights to pick up passengers at certain railroad, airline and steamship terminals serving interstate carriers of passengers and baggage, and from the exercise of which franchises it receives annual revenue in excess of $156,062.40; and which is party to agreements with certain railroads by which it agrees to transfer passengers, traveling on "through" tickets, from the railroad terminals to the steamship docks, or vice-versa, and from the exercise of which agreements it receives an annual revenue of $1,436.55?

The court below answered this question in the negative.

## STATEMENT OF THE CASE

### 1. The Seattle Yellow Cab Enterprise

#### a. Sale of taxicabs by the Yellow Cab Company, a partnership, to 118 purchasing corporations.

Prior to 1955 and 1956, the Yellow Cab Company, a partnership, operated a fleet of more than 120 taxicabs in the city of Seattle, Washington. The drivers and dispatchers employed by the company to operate and dispatch these taxicabs were members of petitioner Taxicab Drivers and Chauffeurs Local Union No. 465, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the company entered into collective bargaining contracts with this union providing wages, hours and conditions of employment for these drivers and dispatchers (R. 73, 76, 121).

In 1955 and 1956, however, the Yellow Cab Company

undertook to liquidate its assets by selling all of its taxicabs, individually, to taxicab drivers and others who were interested (R. 73-74). These sales were accomplished in the following manner:

The Yellow Cab Company first organized respondent Yellow Cab Service, Inc., a Washington corporation, and then sold to this corporation the service facilities and equipment, other than taxicabs, used by it in conducting a taxicab business, including the lease on the company garage and office facilities, the radio and telephone dispatching equipment, the shop and repair equipment, etc. (R. 73, 87-88).

The Company then solicited buyers for the taxicabs and when willing buyers were obtained, it required these buyers, or purchasers, to incorporate under the laws of the State of Washington and, further, to execute a certain "conditional sales contract" and also a certain "agreement" (R. 74, 79-80).

Pursuant to the terms of the "conditional sales contract" each purchasing corporation was sold a taxicab, a meter, a radio, a city permit, and four shares of Series 2 common stock in Yellow Cab Service, Inc. The contract provides that said property is to remain the absolute property of the Yellow Cab Company until the payment in full of the purchase price. Upon payment in full of the purchase price, title would then vest in the purchasing corporation subject, however, "to the terms and conditions of an agreement of even date herewith entered into between the parties hereto and Yellow Cab Service, Inc., a Washington corpora-

tion." The contract further provides that should the purchasing corporation breach any of the provisions of said agreement then the Yellow Cab Company can repossess the property conveyed (R. 9, 14-16, 23; Def. Ex. 2).

At the same time that each purchasing corporation executed the "conditional sales contract" described in the preceding paragraph, it also executed a certain "agreement" between the purchasing corporation on the one hand, and the Yellow Cab Company and Yellow Cab Service, Inc., on the other. This agreement provides that the Yellow Cab Company will retain the controlling shares in Yellow Cab Service, Inc., until all the purchasing corporations make all the payments required under all of the conditional sales contracts, at which time such shares will be assigned and transferred to Yellow Cab Service, Inc. This agreement further provides that the purchasing corporation agrees to "conform to, and be bound by, uniform rules and regulations" adopted by the board of directors of Yellow Cab Service, Inc., covering "among other things, but without limitations, rules and regulations relating to the dispatch and traffic control of cabs, the use of taxi stands, the servicing of transportation accounts, display of advertising, and maintenance and care of the operator's taxicab." It also provide that the purchasing corporation agrees to "conform to and be bound by the union contract provisions relating to the operation of taxicabs in the City of Seattle (R. 9-10, 17-22, 23; Def. Ex. 3).

Upon the execution of the "conditional sales con-

tract" and the "agreement," each purchasing corporation pledged its four shares of Series 2 common stock in Yellow Cab Service, Inc., to the Yellow Cab Company as security guaranteeing its performance of the terms and conditions of the "conditional sales contract." At the same time, and for the same purpose, the president of each purchasing corporation personally pledged a number of shares in his corporation to the Yellow Cab Company (R. 147-148, 154, 164; Def. Ex. 37).

During the years 1955 and 1956, the Yellow Cab Company, pursuant to the methods and contracts described above, sold some 120 taxicabs to some 118 purchasing corporations. At the time of the trial of this case none of the purchasing corporations had completed the payments required of it under the "conditional sales contract." In several instances the purchasing corporations could not make the payments required and the taxicabs were repossessed by the Yellow Cab Company and resold to other purchasing corporations (R. 73-74, 118-119, 148, 153-153).

**b. The 118 purchasing corporations and Yellow Cab Service, Inc., conduct an integrated taxicab business.**

Although the taxicabs formerly operated by the Yellow Cab Company are now being operated by some 118 purchasing corporations, these corporations, together with respondent Yellow Cab Service, Inc., continue to run an integrated taxicab service in the City of Seattle. Respondent Yellow Cab Service, Inc., is hereafter referred to as "the service corporation."

All taxicabs are painted the "Yellow" color pursuant to color rights granted to the purchasing corporations by the service corporation, and all carry advertising for the Standard Oil Company, the revenue from which is paid to the service corporation. The individual license or permit issued for each taxicab by the city of Seattle is issued jointly in the name of the purchasing corporation involved and the service corporation (R. 2, 7, 151).

All the taxicabs are centrally dispatched through the telephone and radio dispatching facilities operated by the service corporation in the garage and office which it leases at 902 Madison Street, Seattle. Generally, shifts begin and end at this garage, and the taxicabs are stored there when not in use (R. 87-88, 89, 91; Def. Ex. 13, 16, 20, 22).

The service corporation employs approximately 10 employees who operate the radio and telephone equipment used in dispatching the taxicabs. These dispatchers are members of petitioner Taxicab Drivers and Chauffeurs Local Union No. 465. The service corporation also employs "traffic men" who investigate accidents in which Yellow taxicabs are involved and who act as starters at the train depots and other places where Yellow taxicabs accumulate, and it employs office and clerical employees who do the bookkeeping, accounting and payroll work for the service corporation and the 118 purchasing corporations (R. 3, 7, 88-91, 102, 178-179).

The 120 taxicabs operated by the 118 purchasing corporations are usually driven by the presidents of the

respective purchasing corporations (hereafter called the "owners") and by employees specifically employed for that purpose (hereafter called the "employee-drivers"). Like the dispatchers the employee-drivers are members of Local 465 (R. 89, 177-178, 223).[1]

One of the employees of the service corporation is designated as "personnel manager." By action of the 118 purchasing corporations this "personnel manager" has been vested with authority to hire, fire and discipline the employee-drivers and to assign them to shifts on various taxicabs being operated by the various purchasing corporations, as well as assign these employees their days off, emergency leaves and vacations, and this authority has been extensively exercised by the "personnel manager." There is a considerable interchange of employees from taxicab to taxicab, which is done upon the assignment of the "personnel manager." Personnel records relating to all employee-drivers are maintained by the "personnel manager" (R. 102, 103-106, 170, 172-174, 177-178, 180-183; Def. Ex. 22, 42).

At the end of each shift the driver of each taxicab, whether he be an employee-driver or an owner, is required to turn the gross proceeds from that shift (known as the "turn") over to the office cashier working for the service corporation. These funds are then credited to the account of the purchasing corporation operating the particular cab. From these funds, the

[1] The testimony at the trial did not reveal the actual number of drivers working for the purchasing corporations but union records available to counsel for the petitioners indicate that, at the time of the strike in September, 1958, there were approximately 150 so employed.

service corporation deducts and pays (1) the wages due to the employee-drivers; (2) the payments due for Social Security, Workmen's Compensation, Unemployment Compensation and Health and Welfare coverages; (3) the automobile insurance premiums; (4) the payments due under the conditional sales contract; and (5) the service charges due to service corporation (known as the "nut"). The amount remaining is paid to the owners. Checks are issued to the owners and to the employee-drivers once a week. The pay checks issued to the employee-drivers list the service corporation as the payor (R. 88-90, 185, 190-192, 197, 219, 221; Def. Ex. 43, 44; Plt. Ex. 46).

There is one blanket policy of fire, theft and liability insurance covering all the taxicabs. The service corporation assists the purchasing corporations in negotiating for this insurance coverage and deducts the insurance premiums from the daily "turn" and pays said premiums directly to the insurance company. Owners who have too many accidents may have their cabs repossessed and resold to someone else (R. 2-3, 7, 90, 102-103; Def. Ex. 20).

The service corporation has a five-man board of directors, three of whom represent the Yellow Cab Company and two of whom represent the purchasing corporations. This board of directors meets regularly for the purpose of discussing matters of common interest, including the adoption of rules and regulations relating to "the dispatch and traffic control of cabs, the use of taxi stands, the servicing of transportation accounts,

display of advertising and the maintenance and care of the individual taxicabs" (R. 101-102; Def. Ex. 3, 17, 19, 20, 30).

The owners hold periodic meetings at which times they have adopted uniform rules and regulations for the conduct of their joint business, including the procedure to be followed by the "personnel manager" in the hiring, firing, disciplining and assigning of employee-drivers. The owners have also elected an owner's committee to act for the entire group of owners in the interval between owners' meetings. Two of the directors of the service corporation are members of this owners' committee. The president of service corporation has attended meetings of the owners' committee and given advice to that committee (R. 94, 97-98, 102-103, 185-186; Ex. 14, 16, 22).

Once a week the service corporation issues the "Yellow Cab Service, Inc., Bulletin" over the signature of the president of that corporation. This bulletin is published as a house organ and is distributed to all owners and employee-drivers. It contains the "operating procedure" and "rules and regulations" adopted at the owners' meetings, as well as announcements and directives from the service corporation (R. 92-94, 170-172; Def. Ex. 6 through 23).

All of the taxicabs operate largely in Seattle and King County. None of them operate across state lines (R. 114).

**c. Revenue received by the Seattle Yellow Cab enterprise and franchises held by it.**

During the year from July 1, 1957, through June 30, 1958, the 120 Yellow taxicabs operated by the 118 purchasing corporations earned a gross revenue of $1,429,914.02 (R. 108; Def. Ex. 24).

The service corporation owns franchise or concession agreements by which Yellow taxicabs are given exclusive rights to pick up passengers at the following railroad, air line and steamship terminals in Seattle, which terminals service interstate carriers of passengers and baggage: King Street Railroad Station; the Union Railroad Station; the King County Airport (also known as Boeing Field); the Seattle-Tacoma International Airport (also known as Bow Lake Field), and the Canadian Pacific Steamship Dock. In addition, Yellow taxicabs deliver passengers to these terminals, although such services are not pursuant to exclusive franchises or concessions (R. 12, 25, 80-84; Def. Ex. 5, 19).

Copies of the franchise or concession agreements between the service corporation and the airports and the Canadian Pacific Steamship Dock were not available (R. 81-83). However, a copy of the agreement between the service corporation and the Northern Pacific Railway and the Great Northern Railway, joint operators of the King Street Railroad Station, provides, in part, as follows:

"III.

"The Railroad Companies in order to care for

their incoming passengers desire to have at the King Street Station at all times when trains arrive a sufficient number of taxicabs in charge of sober and courteous drivers to serve incoming passengers. The Railway Companies . . . do therefore grant to the Cab Company the exelusive right to occupy with taxicabs the space belonging to the Railway Companies situate adjacent to Third Avenue South alongside said King Street Station as shown enclosed in red lines on the map hereto attached and made a part of this agreement.

"IV.

"The Cab Company agrees to furnish and keep in attendance at said station during the hours when trains arrive a sufficient number of taxicabs in charge of sober and courteous drivers to serve incoming passengers, and agrees that passengers shall be transported to and from said station at reasonable rates, not to exceed those fixed by ordinance of the City of Seattle.

"V.

"The Cab Company agrees to remove from its service at that point any driver who for any reason is unsatisfactory to the Superintendent of the King Street Station upon being requested to do so by said Superintendent." (Def. Ex. 5; R. 243)

There exists a similar agreement with the Union Pacific Railroad covering the Union Railroad Station (R. 82).

No figures are available showing the amount of revenue earned by Yellow taxicabs from taking passengers to and from the railroad stations and the steamship dock (R. 112). Company records show, however, that

during the year from July 1, 1957, through June 30, 1958, Yellow taxicabs earned a gross revenue of $156,062.40 from picking up passengers at the King County Airport and the Seattle-Tacoma International Airport, pursuant to the franchise or concession agreements. During this same period these taxicabs earned an additional gross revenue of $46,818.00 from delivering passengers to these airports (R. 110-112; Def. Ex. 24).

The service corporation also holds agreements with the railroads operating out of the King Street Station and the Union Station by the terms of which Yellow taxicabs are exclusively utilized by said railroads to transfer through-passengers and baggage between said stations and the Canadian Pacific Steamship Dock, and vice-versa. During the year from July 1, 1957, through June 30, 1958, the Yellow taxicabs earned a gross revenue of $1,436.00 from furnishing such transfer services (R. 80-82, 84-87, 109-110; Def. Ex. 4, 24).

**2. The Strike of Taxicab Drivers and Chauffeurs Local Union No. 465 Against the Seattle Yellow Cab Enterprise**

At the time the taxicabs were sold to the purchasing corporations the Yellow Cab Company and petitioner Local 465 were parties to a collective bargaining agreement covering the drivers and dispatchers employed by the Company. In June, 1956, after the sale of the taxicabs, this contract expired. Subsequently, the purchasing corporations appointed a committee of owners, and this committee, together with representatives of the service corporation, negotiated a new collective bargaining agreement with Local 465 covering the

employee-drivers and dispatchers. Each purchasing corporation, and the service corporation, signed this agreement. By its terms, this agreement ran from August 1, 1956, to June 1, 1958, and from year to year thereafter unless amended or cancelled, and it provided that either party could open the contract by giving sixty days' notice to the other party. On March 26, 1958, the service corporation and the 118 purchasing corporations jointly terminated this agreement and notified Local 465 that they were willing to negotiate the provisions of a new agreement (R. 10, 23-24, 76-78, 128-129, 130, 165, 199-200, 223; Def. Ex. 1; Plt. Ex. 27).

During the ensuing months, representatives of Local 465 met and corresponded with representatives of the purchasing corporations and the service corporation in an attempt to arrive at mutually satisfactory terms for a new contract covering drivers and dispatchers. As one of the conditions for agreeing to a new contract, Local 465 requested that the purchasing corporations and the service corporation settle with the Local several pending grievances which arose during the life of the prior contract, including the failure of the service corporation to pay over to the trustees of a pension fund the sum of approximately $60,000.00 in pension premiums on employee-drivers, required by the terms of the prior contract. Another request of Local 465 was that it have some assurance that the service corporation, through its officers or employees, would participate in the settling of any grievances which arose during the life of the new contract. However, the negotiations between the parties

were unsuccessful and on September 16, 1958, the Local called a strike against the purchasing corporations and the service corporation and as an incident thereto caused two pickets to peacefully patrol the garage and office at 902 Madison Street, Seattle. The pickets carried signs reading

"YELLOW CABS
are
UNFAIR
to
TAXICAB DRIVERS LOCAL
UNION NO. 465."

On September 17 and again on September 18, 1958, the Federal Mediation and Conciliation Service requested the parties to meet with a representative of said service in an effort to resolve the differences between the parties so that the strike could be terminated. Two meetings were held but no agreement was reached and the strike and picketing continued (R. 11-12, 24, 132, 143-146, 158-163, 202-211, 212-217; Def. Ex. 3, 32, 33, 47 and 48).

### 3. Proceedings in the Trial Court

On September 23, 1958, the service corporation brought an action in the Superior Court for King County, Washington, against Local Union 465, George Lancaster, its secretary-treasurer, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, seeking a permament injunction restraining the Local and the International from picketing its place of business at 902

Madison Street. The complaint alleged that the service corporation was willing to sign a collective bargaining contract with the Local covering the dispatchers employed by said corporation; that no labor dispute existed between it and the Local, that the picketing was therefore unlawful, and that it was causing the service corporation to suffer irreparable damage (R. 1-5). Contemporaneously with the filing of this complaint, the service corporation also obtained an order requiring the defendants to appear and show cause why a temporary injunction should not issue in accordance with the allegations of the complaint, pending a trial on the merits of the request for permanent injunction (R. 7). Local 465 and George Lancaster answered the complaint, alleging, *inter alia*, that the purchasing corporations and the service corporation constituted a single business enterprise, that this enterprise was engaged in an industry "affecting commerce" within the meaning of the federal Labor Management Relations Act, 29 U.S.C. Secs. 141-187, that the activities of Local 465 in striking and picketing were protected activities within the meaning of said Act, and that the Superior Court of King County had no jurisdiction over plaintiffs' action (R. 7-13).

On October 1, 7, 8 and 9, 1958, Local 465 and George Lancaster appeared before the Honorable Lloyd Shorett, one of the judges of the Superior Court for King County, to show cause why a temporary injunction should not issue (R. 70-240). The parties then stipulated that the hearing pursuant to the order to show cause was to be treated as a trial on the merits of the

service corporation's request for a permanent injunction (R. 87).

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America did not appear and the service corporation offered no proof that service of process had been had upon it (R. 70-240).

At the conclusion of the trial, the court orally ruled that the 118 purchasing corporations and the service corporation functioned as one business operation or enterprise; that the activities of this enterprise affected interstate commerce; and that the National Labor Relations Board, and not the Superior Court for King County, had jurisdiction to determine the lawfulness, or unlawfulness, of Local 465's conduct in striking and picketing (R. 40-43).

**4. Proceedings in the Supreme Court of Washington**

Immediately upon the trial court's ruling that it had no jurisdiction over its cause of action, the service corporation filed, in the Supreme Court of Washington, an *ex parte* application for an alternative writ of mandate requiring the Superior Court for King County to assume jurisdiction of its application for an injunction, together with an affidavit in support thereof (R. 27-43). The court below granted the application and ordered the trial court to appear and show cause on November 13, 1958, why it should not take and assume jurisdiction over the service corporation's cause of action (R. 43-45).

The respondent trial court then filed a return and

answer to the application for alternative writ of mandate (R. 45-60).

On November 13, 1958, the cause was heard by the court below, sitting *en banc*.

On January 8, 1959, the court below filed an opinion in which it held that the trial court was in error in holding that the jurisdiction of the case rested with the National Labor Relations Board. The court ruled that the activities of the purchasing corporations and the service corporation, considered as a single enterprise, do not fall within the scope of the National Labor Relations Act and are not subject to the jurisdiction of the National Labor Relations Board (R. 60-67).[2]

The court acknowledged that the Seattle Yellow Cab enterprise did an annual gross business of $1,429,914.02, and that the National Labor Relations Board has announced that it will take jurisdiction over any taxicab business doing an annual gross business of $500,000, but, said the court, "the test is not the amount of gross volume of business, but whether the local transportation service is an integral part of interstate commerce" (R. 63).

Relying on *U.S. v. Yellow Cab Company*, 332 U.S. 218, 91 L.ed. 2010 (1947), a case arising under the Sherman Anti-Trust Act, and upon *Mateo v. Auto*

[2]In the first paragraph of its opinion, the court states that the case involves an action against "The International Brotherhood of Teamsters." As noted previously, the International Brotherhood of Teamsters did not appear at the trial and there was no showing that service had been made upon it. The only defendants in the case were Taxicab Drivers and Chauffeurs Local Union No. 465 and George Lancaster, its secretary-treasurer.

*Rental Company* (9th Cir. 1957) 240 F.2d 831, a case arising under the Fair Labor Standards Act, the court held that the activities of a local taxicab company, even though it delivers passengers to and from the terminals of railroad stations and airlines, do not constitute "an integral part of interstate commerce." The court also cited the *Checker Cab Company* decision of the National Labor Relations Board, 110 NLRB 663 (1954), wherein the Board declined to assert jurisdiction over a local taxicab company (R. 64-66).

The court also stated that the activities of the union in striking and picketing the Seattle Yellow Cab system could not be said to be "burdening or obstructing commerce" as there was no testimony in the record to the effect that the strike impaired taxicab service to or from the railroad terminals, airports and docks (R. 66).

The court indicated that perhaps the operation in which Yellow cabs carry through-passengers from the railroads to the steamship dock would constitute "interstate commerce" but noted that the revenue received from this operation was only one-tenth of one per cent of the annual gross revenue (R. 67). The court then concluded:

> ". . . we do not believe that Seattle's Yellow cab system constitutes such an integral step in the interstate movement of passenger traffic as to be considered as being in interstate commerce, nor that any unfair labor practices whether by the union or the Yellow Cab system burden or obstruct interstate commerce. For this reason the Superior

Court was in error in holding that jurisdiction of this case lies with the National Labor Relations Board." (R. 67)

On February 10, 1959, the Supreme Court of Washington entered its judgment in the matter, which judgment decrees that the requested writ of mandate is granted directing the Superior Court of King County to take jurisdiction of the service corporation's action for injunctive relief (R. 68-69). By order of the Chief Justice of the Supreme Court of Washington, the judgment has been stayed, pending action by this court (R. 69-70).[3]

## SUMMARY OF ARGUMENT

Petitioner Local 465 properly challenged the jurisdiction of the state court in this matter, on the ground that the Seattle Yellow Cab system is engaged in an industry affecting commerce, and that, accordingly, the sole and exclusive forum for determining the legality of Local 465's peaceful strike and picketing activities against the taxicab system, is the National Labor Relations Board. *Weber v. Anheuser Busch*, 348 U.S. 468 99 L.ed. 546 (1955), and numerous other decisions of this court.

The trial court sustained Local 465's challenge to the jurisdiction of the court, but the court below reversed. In the opinion of the court below, the federal pre-emption doctrine does not apply because the Seattle Yellow Cab system is not sufficiently involved "in interstate

[3] As of the date of preparation of this brief, the strike and picketing still continue.

commerce" to be subject to the National Labor Relations Board.

By the terms of the National Labor Relations Act, the Board is given jurisdiction not only of industries engaged *in* interstate commerce, but, more broadly, over all industries which *affect* commerce. In a proper case, the Board's jurisdiction may even extend to a company whose activities are wholly *intra*state. *NLRB v. Fainblatt*, 306 U.S. 601, 83 L.ed. 1014 (1939).

There is no question but that the Board would assume jurisdiction over the Seattle Yellow Cab system if its processes were invoked. The Board is now asserting jurisdiction over local taxicab companies, like this system, which do an annual business of more than $500,000. NLRB Press Release R-576, Oct. 2, 1958; *Cab Services, Inc.*, 123 NLRB No. 19 (1959). The court below should have deferred to this announced jurisdictional policy, without further inquiry. If the Board's jurisdictional practices are to be questioned, this should be done in litigation before the Board. *Newport News Shipbuilding Company v. Schauffler*, 303 U.S. 54, 82 L.ed. 646 (1938).

Further, the evidence shows that the activities of the Seattle Yellow Cab system clearly affect interstate commerce. The system holds agreements with interstate railroads by the terms of which it transfers through-passengers from the railroad terminals to the steamship docks, and vice versa. These activities are part of interstate commerce. *Chicago v. Atchison, Topeka and Santa Fe*, 357 U.S. 77, 2 L.ed. 1174 (1958). A labor dis-

pute involving Yellow cabs could directly "obstruct" this commerce. Similarly, the system holds franchises with the railroad, airline and steamship terminals by which it is granted the exclusive right to service incoming passengers at those terminals. These activities constitute a necessary "link" in the operations of the carriers who use these terminals. *Red Cab, Inc.*, 92 NLRB 175 (1950). Even if these activities do not constitute a part of interstate commerce, they do facilitate the travel of interstate passengers. A labor dispute involving the system could easily diminish these services and thus obstruct or burden the free flow of interstate travel. *New York State Labor Relations Board v. Wags Transportation System, Inc.*, 130 N.Y.S.2d 731, aff'd 284 App. Div. 883, 134 N.Y.S.2d 603 (1954).

Lastly, this large taxicab system undoubtedly makes substantial direct or indirect out-of-state purchases of taxicabs, parts, gasoline, etc., so that it could be said that a labor dispute might interfere with or obstruct the free flow of such articles in interstate commerce.

The court below was influenced by the fact that there was no evidence that the strike and picketing have actually burdened or obstructed commerce. It is clear, however, that the jurisdiction of the National Labor Relations Board is not dependent upon a showing that there has been an actual impairment of commerce. *NLRB v. Bradford Dyeing Association*, 310 U.S. 318, 84 L.ed. 1226 (1940).

The cases relied upon by the court below, *United*

*States v. Yellow Cab Co.*, 332 U.S. 218, 91 L.ed. 2010 (1957), a case arising under the Sherman Anti-Trust Act, and *Mateo v. Auto Rental Co.*, 240 F.2d 831 (9th Cir. 1957), a case arising under the Fair Labor Standards Act, are inapposite here for they involve statutes which are not similar in scope to the National Labor Relations Act.

## ARGUMENT

### I. The National Labor Relations Board Has Exclusive Jurisdiction to Determine the Lawfulness, or Unlawfulness, of Peaceful Strikes and Picketing in All Industries Affecting Commerce

Petitioners' challenge to the jurisdiction of the state court was based upon the proposition that the dispute involved was one which, by the terms of the National Labor Relations Act, was subject to the exclusive jurisdiction of the National Labor Relations Board.

It is firmly established, through repeated decisions of this Court, that where a union is peacefully striking and picketing an employer that is engaged in an industry affecting commerce, the sole and exclusive standard for determining the lawfulness or unlawfulness of the union's conduct is the National Labor Relations Act and the sole and exclusive agency for applying that standard is the National Labor Relations Board. The Board may determine that the strike and picketing are not unlawful, or that they constitute protected activities within the meaning of Sections 7 and 13 of the Act, in which cases the union would remain free to pursue such activities, or the Board may determine that the

strike and picketing are unfair labor practices under Section 8 of the Act, in which case the Board would proceed to order the union to cease and desist from such activities and perhaps obtain a federal court injunction to preserve the status quo pending the Board proceedings. In any event the regulation of such activities is exclusively for the Board. All other processes and remedies, including those of state courts, are preempted. Among numerous decisions are:

*Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S. 383, 95 L.ed. 364 (1951);

*Garner v. Teamsters, Chauffeurs and Helpers, Local Union No. 776*, 346 U.S. 485, 98 L.ed 228 (1953);

*Weber v. Anheuser Busch*, 348 U.S. 468, 99 L.ed. 546 (1955);

*United Mine Workers of America v. Arkansas Oak Flooring Co.*, 351 U.S. 62, 100 L.ed. 941 (1956);

*Amalgamated Meat Cutters Local 427 v. Fairlawn Meats*, 353 U.S. 20, 1 L.ed. 2d 613 (1957);

*San Diego Building Trades Council v. Garmon*, 353 U.S. 26, 1 L.ed.2d 618 (1957) and ..... U.S. ....., 3 L.ed.2d 2775 (1959);

*Hotel Employees Union Local No. 255 v. Sax Enterprises*, ..... U.S. ....., 3 L.ed.2d 289 (1959) (*per curiam*).

As this Court noted in the *Weber* decision, *supra*, at p. 475, "exclusive primary jurisdiction to pass on (a)

union's picketing is delegated by the Taft-Hartley Act to the National Labor Relations Board."

At the conclusion of the trial the trial court upheld petitioners' challenge to the court's jurisdiction, ruling that the Seattle Yellow Cab system was engaged in an industry affecting commerce, and that the service corporation's exclusive remedy, if any, was with the National Labor Relations Board (R. 40-43). During the trial, the service corporation argued that the Seattle Yellow Cab enterprise was composed of 119 corporations and that the operations of each corporation, considered separately, would not affect commerce, except perhaps on a *de minimis* basis. The trial court rejected this argument and ruled that the various corporations conducted an integrated taxicab business and that, considered as one entity, the activities of this business affected commerce (R. 41-42).[4]

The court below disagreed with the trial court and held that the doctrine of federal pre-emption did not apply. Even if the Seattle Yellow Cab system is considered as a single enterprise, said the court below, its activities do not sufficiently involve interstate com-

[4] The court's ruling is supported by numerous decisions of the National Labor Relations Board to the effect that where separate companies conduct an integrated business, or where they participate together in collective bargaining, these companies can be considered as a single employer for jurisdictional purposes. See *Cab Services Inc.*, 123 NLRB No. 19 (1959), Appendix, *infra*, pp. 39-55 (a recent decision where the Board considered a taxicab enterprise, like the one in the instant case, as a single employer); also *Edward Taubman, et al.*, 77 NLRB 846 (1948); *Bunker Hill Mining Co., et al.*, 89 NLRB 243 (1950); *Steinway Drug Co.*, 102 NLRB 1630 (1953); *Inter-Ocean Steamship Co.*, 107 NLRB 330 (1953); *Orkin Exterminating Co.*, 115 NLRB 622 (1956); *Blue Rock Quarry*, 116 NLRB 1778 (1956); *Allen's Inc.*, 120 NLRB 1021 (1958).

merce so as to bring the system, and its labor disputes, within the jurisdiction of the National Labor Relations Board (R. 60-67).

For the reasons stated hereafter, petitioners respectfully submit that the court below erred in holding that the Seattle Yellow Cab system is not subject to the jurisdiction of the National Labor Relations Board.

## II. The Seattle Yellow Cab System Is Engaged in an Industry Affecting Commerce and Is Subject to the Jurisdiction of the National Labor Relations Board

### A. The National Labor Relations Board Is Currently Asserting Its Jurisdiction Over Taxicab Companies

In adopting the National Labor Relations Act, Congress exercised the full extent of its authority under the Commerce Clause of the Constitution. The Act was designed to regulate labor relations, not only in industries engaged *in* interstate commerce, but, more broadly, in all industries which *affect* commerce.

> "Since it was first enacted in 1935, the National Labor Relations Act has empowered the National Labor Relations Board 'to prevent any person from engaging in any unfair labor practice . . . (defined by the Act) affecting commerce.' By this language and by the definition of 'affecting commerce' elsewhere in the Act, Congress meant to reach the full extent of its power under the Commerce Clause." *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 3-4, 1 L.ed.2d 601 (1957).

The term "affecting commerce" is defined in Section 2(7) of the Act as follows:

> "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

Thus, the National Labor Relations Board has been given broad jurisdiction, extending even to companies and industries whose activities are wholly *intra*state. *NLRB v. Fainblatt*, 306 U.S. 601, 604-605, 83 L.ed. 1014 (1939). Indeed, the Board's jurisdiction is so extensive that the Board has never been able to fully exercise it. Because of budgetary and staff limitations the Board has had to limit its activities by adopting what it terms "jurisdictional standards." The Board will decline to exercise its authority over labor disputes involving companies which do not meet these self-imposed "jurisdictional standards," even though the activities of these companies may otherwise "affect commerce." See *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 3-4, 1 L.ed.2d 603 (1957); *NLRB v. Denver Building and Construction Trades Council, et al.*, 341 U.S. 675, 684, 95 L.ed. 1284 (1951).

There is no doubt, however, that under the Board's current jurisdictional standards, the Board would assume jurisdiction over the instant dispute involving the Seattle Yellow Cab system. On October 2, 1958, the Board announced, through a press release, that its then existing jurisdictional standards would be broadened. With specific reference to taxicab companies, the Board announced that it would take jurisdiction over any such company which does an annual gross business

of $500,000 or more. (NLRB Press Release, No. R-576, October 2, 1958).[5]

Pursuant to this announcement, the Board is now asserting jurisdiction over local taxicab companies doing an annual gross business of $500,000 or more. The first reported case is *Cab Services, Inc.*, 123 NLRB No. 19 (March 12, 1959).[6] This case, like the instant case, involved numerous taxicab owners and a service corporation who, together, operated an integrated taxicab system.

The Seattle Yellow Cab system would easily meet the Board's jurisdictional standard for taxicab companies for it does an annual gross business of some $1,429,914.02 (R. 108; Def. Ex. 24).

The court below acknowledged the likelihood that the Board would take jurisdiction over the Seattle Yellow Cab system, in accordance with its current standard, but it did not think such an assertion of jurisdiction would be lawful. Said the court below, "the ultimate test is not the amount of gross volume of business, but whether the local transportation service is an integral part of interstate commerce" (R. 63).

Petitioners submit that the court below erred in rejecting as irrelevant the Board's present jurisdictional standard for taxicab companies. The Board's current practice of assuming jurisdiction over any taxi-

[5] For the convenience of the Court, the pertinent portions of this press release are printed in the Appendix, *infra*, pp. 47-48.

[6] For the convenience of the Court, the Board's decision in this case, which is not yet printed in a bound volume of Board decisions, is printed in the Appendix, *infra*, pp. 49-55.

cab company doing an annual business of $500,000 or more, is based upon the proposition, supported by common knowledge, that the activities of such a taxicab company necessarily "affect commerce." Even if it had no other relationship to the channels of interstate commerce, a local taxicab company doing a half-million dollar yearly business would undoubtedly make substantial direct or indirect out-of-state purchases of taxicabs, parts, gasoline, etc., and a labor dispute involving such a company could interfere with the free flow of those articles in interstate commerce. Against a background of 24 years of experience in administering the Act, it would not be unreasonable for the Board to base its jurisdictional standard for taxicab companies on such a proposition.

We note that Congress has now "frozen" the jurisdictional standards of the Board as they existed on August 1, 1959. Section 701 of the Labor Management Reporting and Disclosure Act of 1959, Public Law 86-257, 86th Congress, 1st Sess., amends Section 14 of the National Labor Relations Act so as to provide that "the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959." Under this statute the Board must continue to exercise jurisdiction over all taxicab companies which do an annual business of more than $500,000. Congress has clearly indicated, by adopting such a statute, that it agrees with the Board that taxicab companies of this size are obviously engaged in an industry "affecting commerce."

This Court has often held, in cases involving the doctrine of federal pre-emption, that the state courts should decline jurisdiction over labor disputes where the facts "reasonably" bring the controversy within the jurisdiction of the Board. See *Weber v. Anheuser Busch*, 348 U.S. 468, 99 L.ed. 546 (1955). Certainly, in view of the Board's express announcement that it would take jurisdiction of any taxicab company doing an annual business of $500,000 or more, it "reasonably appears" that the Board would take jurisdiction over the Seattle Yellow Cab system. Petitioners submit, therefore, the court below should have deferred to the announced jurisdictional policy of the Board, without further inquiry. If the Board's jurisdictional standards are to be challenged, this should be done in litigation before the Board, and not in state court proceedings in which the Board is not a party.[7] Compare *Newport News Shipbuilding Company v. Schauffler*, 303 U.S. 54, 57-58, 82 L.ed. 646 (1938); *Meyers v. Bethlehem Ship Building Corp.*, 303 U.S. 41, 50-51, 82 L.ed. 638 (1938).

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[7] In the new Labor Act, Congress has abolished the "no-man's land" illustrated by *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 1 L.ed. 2d 601 (1957) and states are now permitted to take jurisdiction over certain cases which the Board declines to handle, even though they may involve industries affecting commerce. It is relevant that the test adopted by Congress is whether or not the Board would take jurisdiction under its jurisdictional standards. That is, if a case involves an employer falling within the Board's announced jurisdictional standards, state action is foreclosed. If, however, the employer's business falls outside the Board's announced jurisdictional standards, then state action is permitted. In either event, the determination of the jurisdictional standards is for the Board, pursuant to Board proceedings. See Section 701, Labor Management Reporting and Disclosure Act of 1959, Public Law 86-257, 86th Congress, 1st Sess.

**B. The Activities of the Seattle Yellow Cab System Clearly "Affect Commerce" so as to be Subject to the Jurisdiction of the National Labor Relations Board**

However, even if we ignore the present position of the Board with respect to taxicab companies (as did the court below), it is clear that the Seattle Yellow Cab system falls within the scope of the National Labor Relations Act, and is properly subject to the jurisdiction of the Board. The court below stated the issue to be whether the Seattle Yellow Cab system is an "integral part of interstate commerce" (R. 63). As noted previously, whether a company is engaged *in* commerce is not the test of the Board's jurisdiction, **but, rather, whether a company is engaged in activities which "affect commerce."** Stated properly, the inquiry should be whether the activities of the Seattle Yellow Cab system "affect commerce," that is, whether a labor dispute involving this taxicab system could burden or obstruct commerce or the free flow of commerce.

**A labor dispute involving the Seattle Yellow Cab system could logically burden or obstruct commerce, or the free flow of commerce, in any or all of the following ways:**

First, the service corporation holds agreements with the railroads operating out of the King Street Station and the Union Station, Seattle, by the terms of which Yellow taxicabs are exclusively utilized by these railroads to transfer through-passengers and baggage between the stations and the Canadian Pacific Steamship Dock, and vice-versa. Railroad passengers traveling on through-tickets (i.e., tickets entitling them

to railroad and steamship passage) are given "transfer coupons" to be used for the trip by taxicab from the railroad station to the steamship dock. These "coupons" are surrendered to the taxicab drivers and, in turn, they are sent by the Seattle Yellow Cab system to the railroads for reimbursement. During the year from July 1, 1957, through June 30, 1958, the railroads paid the Yellow Cab system the sum of $1,436.00 for its transfer services (R. 80-82, 84-87, 109-110; Def. Ex. 4, 24). In transferring passengers from the railroad stations to the steamship docks, and vice-versa, pursuant to agreements with the railroads, the taxicabs operated by the Seattle Yellow Cab system are actually engaged in interstate commerce. As this Court recently noted, such services are "an integral part of interstate railroad transportation." *Chicago v. Atchinson, Topeka and Sante Fe*, 357 U.S. 77, 89, 2 L.ed.2d 1174 (1958). See also *United States v. Yellow Cab Co.*, 332 U.S. 218, 228-229, 91 L.ed. 2010 (1947). A labor dispute or strike involving Yellow taxicabs might interrupt or curtail these transfer services and, thus, directly "obstruct" interstate commerce.

The court below acknowledged that these transfer services could be considered as interstate commerce, but it discounted these activities as being *de minimis* in nature (R. 67). *De minimis*, however, is regarded in law as meaning "trifles — matters of a few dollars or less." *NLRB v. Suburban Lumber Co.*, 121 F.2d 829, 832 (3rd Cir. 1941), cert. denied, 314 U.S. 693. The railroad transfer services performed by Yellow taxicabs cannot be dismissed as *de minimis*.

Secondly, the service corporation owns franchise or concession agreements by which Yellow taxicabs are given exclusive rights to pick up passengers at the following railroad, airline and steamship terminals in Seattle; which terminals service interstate carriers of passengers and baggage: King Street Railroad Station; the Union Railroad Station; the King County Airport (also known as Boeing Field); the Seattle-Tacoma International Airport (also known as Bow Lake Field), and the Canadian Pacific Steamship Dock. Yellow taxicabs also deliver passengers to these terminals, although such services are not pursuant to exclusive franchises or concessions (R. 12, 25, 80-84; Def. Ex. 5, 19).[8]

No figures are available showing the amount of revenue earned by the Seattle Yellow Cab system from taking passengers to and from the railroad stations and the steamship dock (R. 112). However, during the year from July 1, 1957, through June 30, 1958, the system earned gross revenue of $156,062.40 from picking up passengers at the King County and Seattle-Tacoma International airports, pursuant to the franchise or

[8] Copies of the franchise agreements between the service corporation and the airports and the steamship dock were not available (R. 81-83). However, a copy of the franchise agreement involving the Great Northern and Northern Pacific railroads, joint operators of the King Street Railroad Station, was put in evidence (Def. Ex. 5). This agreement provides, in part, that the railroads desire to have sufficient taxicabs on hand in order to care for their incoming passengers; that to provide such service, the taxicab company is granted exclusive right to pick up incoming passengers, and a parking space for this purpose is provided adjacent to the station; that the taxicab company agrees to keep a sufficient number of taxicabs on hand to service incoming passengers; and that the superintendent of the station shall have supervisory authority over the taxicabs, including the authority to have the taxicab company remove any driver considered by him to be unsatisfactory.

concession agreements. During this same period an additional gross revenue of $46,818.00 was earned from delivering passengers to these airports (R. 110-112; Def. Ex. 24).

Petitioners contend that in servicing the incoming passengers at the railroad stations, airports, and steamship docks, pursuant to these franchise or concession agreements, the Seattle Yellow Taxicab system is acting as an essential "link" in the operations of the interstate railroads, airlines and steamships using those terminals. Any interruption in these services, because of a strike or labor dispute, would directly "obstruct" interstate commerce.

This is the theory upon which the National Labor Relations Board asserted jurisdiction over taxicab companies during the period 1950-1954.[9] For example, in *Red Cab, Inc.*, 92 NLRB 175 (1950), a local taxicab company in Indianapolis, Indiana, had franchise agreements with railroad, bus and airline terminals, used by interstate carriers, by which it was granted ex-

[9] The Board has had a wavering policy with respect to whether it should *assert* jurisdiction over local taxicab companies. In 1949, the Board asserted jurisdiction. *Bussard Taxi and Bus Service*, 81 NLRB 1181 (1949). In early 1950, it declined jurisdiction. *Yellow Cab Company of California*, 90 NLRB 1884 (1950) (and other cases). Later in 1950, it asserted jurisdiction. *Red Cab, Inc.*, 92 NLRB 175 (1950) (and other cases). In 1954, it declined jurisdiction, *Checker Cab Company*, 110 NLRB 683 (1954) (and other cases). In 1958, and currently, it is asserting jurisdiction. NLRB Press Release No. R-576, October 2, 1958. *Cab Services, Inc.*, 123 NLRB No. 19 (1959). However, in those cases in which it declined to *assert* jurisdiction, the Board was careful to point out that it possessed the basic jurisdiction to deal with local taxicab companies, but that, for policy reasons, it deemed it advisable not to exercise such jurisdiction.

clusive rights to pick up passengers at these terminals. The Board asserted jurisdiction, holding:

> "... a portion of the employers' business involves providing transportation services from four established terminals, concededly handling interstate traffic, under arrangements which give the employer certain special and exclusive privileges regarding such services. In these circumstances, we are persuaded that the employers' operation may properly be regarded as an essential link in the services performed by these instrumentalities of commerce, and believe that the reasons which motivated our decision to assert jurisdiction over such instrumentalities are easily applicable here."

See also:

*Skyview Transportation Company*, 90 NLRB 1664 (1951);

*Rite Rate Cab Co.*, 95 NLRB 1302 (1951);

*Charman Service Corporation*, 99 NLRB 534 (1952);

*Red Cab Company*, 98 NLRB 932 (1952), enf'd. *NLRB v. Cushman Auto Company* (1st Cir. 1952) 200 F.2d 412.

We also note that in *Garner v. Teamsters Local Union No. 776*, 346 U.S. 485, 98 L.ed. 228 (1953) this Court considered a local trucking company to be subject to the jurisdiction of the Board because, in hauling freight to and from a railroad terminal, its operations formed a necessary "link" in the operations of the railroad. 346 U.S. 485, 486. If the hauling of freight for a railroad makes a trucking company a "link" in the interstate operations of the railroad, it seems to us

that, similarly, the hauling of passengers for a railroad makes a taxicab company a "link" in its interstate operations.

However, even if the servicing of incoming passengers at the terminals is not sufficient to constitute the Seattle Yellow Cab system as a "link" in the interstate operations of the carriers using those terminals, it cannot be disputed that an interruption of these services would inconvenience numerous interstate passengers and interfere with their travel. In this respect, a labor dispute involving the Seattle Yellow Cab system could easily "burden" the free flow of commerce. A leading decision here is *New York State Labor Relations Board v. Wags Transportation System, Inc.*, 130 N.Y.S.2d 731, aff'd 284 App. Div. 883, 134 N.Y.S.2d 603 (1954). In this case the New York State Labor Relations Board brought an action seeking to enforce an order issued by it against the Wags Transportation System, Inc., a New York City taxicab company. The company defended on the ground that the controversy was subject to the exclusive jurisdiction of the National Labor Relations Board. The evidence showed that the company owned and operated 57 taxicabs and that it was part of an over-all system of 29 taxicab companies known as the Terminal System, Inc. Terminal did not operate any taxicabs but it possessed agreements with the New York Central Railroad, New Haven Railroad, Pennsylvania Railroad, and other railroads by which its member companies were given the exclusive right to maintain their taxicabs at these terminals for the purpose of servicing incoming passengers. More

than 15% of the trips made by Terminal System taxicabs were made from these terminals.

The court held that, under National Labor Relations Board decisions, it was proper to consider all of the companies making up the terminal system as a single unit or single employer to determine the existence of the Board's jurisdiction. The court also held that *the* operations of the Terminal System "affected commerce" and were subject to the exclusive jurisdiction of the National Labor Relations Board:

> "Taxicabs, particularly those which have a franchise to serve railroad and bus terminals, are an adjunct of interstate travel. Their temporary unavailability would constitute a burden upon interstate rail and bus travel . . . Industry or commerce need not be dealt a paralyzing blow before it can be deemed to be burdened by a labor dispute affecting such commerce. As a practical matter, curtailment or elimination of such taxi service would have a substantial effect upon interstate commerce. A labor dispute could very well have a greater impact upon transportation service to interstate passengers than a conspiracy to exclude competition. Wags' operation has a sufficient impact upon interstate commerce to justify the NLRB in asserting jurisdiction over its operation." 130 N.Y.S.2d 731, 740.

Lastly, the record reveals that the Seattle Yellow Cab system operates 120 taxicabs and has an annual gross revenue of some $1,429,914.02 (R. 108; Def. Ex. 224).[11]

[10] This decision was cited approvingly by this Court, in *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 1 L.ed. 601 (1957), at footnote 9.

[11] Although no comparisons appear in the record, petitioners believe they can state without contradiction that this is the largest taxicab company in the states of Washington, Oregon, Idaho and Montana.

While no evidence was taken on these matters, it cannot be disputed that the system makes substantial direct and indirect out-of-state purchases of taxicabs, parts, gasoline, etc. A strike involving the system could burden or obstruct commerce by cutting off or diminishing the flow of these articles in interstate commerce.

For the foregoing reasons, petitioners submit that the activities of the Seattle Yellow Cab system clearly "affect commerce" and that a labor dispute involving the system is properly subject to the jurisdiction of the National Labor Relations Board.

### C. The Jurisdiction of the National Labor Relations Board is not Dependent Upon a Showing That An Obstruction of Commerce Has Actually Occurred

In holding that the Seattle Yellow Cab system was not subject to the jurisdiction of the National Labor Relations Board, the court below was influenced by the fact that there was no evidence in the record indicating that the strike and picketing of petitioner Local 465 had interfered with the transportation of passengers to and from the railroad, airline and steamship terminals and thus no evidence that commerce was actually burdened or obstructed (R. 66).

It is true that there was little testimony introduced dealing with the effectiveness of the strike and picketing.[12] Such testimony is not necessary in deter-

[12] It is to be noted, however, that the service corporation continually took the position that the strike and picketing was causing irreparable damage to the taxicab business conducted by it and the purchasing corporations. See, for example, the affidavit of A. H. Wenck, president of the service corporation, filed in support of the application for a

mining whether the Seattle Yellow Cab system is subject to the jurisdiction of the National Labor Relations Board. This Court and other courts which have considered this issue have uniformly held that the exercise of jurisdiction by the Board is not dependent upon a showing of an actual stoppage or impairment of commerce:

> "It is not material as the court below thought, that respondent's customers might be able to secure the same services from other Rhode Island processors if the labor dispute should stop the interstate flow of materials to and from respondent's plant. Since the purpose of the act is to protect and foster interstate commerce, the Board's jurisdiction can attach, as here, before actual industrial strife materializes to obstruct that commerce." *NLRB v. Bradford Dyeing Association*, 310 U.S. 318, 326, 84 L.ed. 1226 (1940).

> "The contention made that the particular acts of respondent, upon which the Board based its findings of unfair labor practice, have not been shown to have been a burden upon commerce is without merit. The Board need not prove an actual stoppage in the flow of commerce or even the immediate likelihood of such stoppage before it assumes jurisdiction over the employer." *NLRB v. Phoenix Mutual Life Insurance Co.*, 167 F.2d 983, 985 (7th Cir. 1948), cert. denied, 335 U.S. 845, 93 L.ed. 395 (1948).

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writ of mandate, wherein he asserts that the dispatchers and drivers have not reported for work, that this has caused "substantially reduced operations," that there have been "considerable delays" in rendering services, and that a continuation of the strike and picketing may put the service corporation and the purchasing corporations completely "out of existence, thereby diminishing competition and also injuring the general public" (R. 45-46).

Accord:

*NLRB v. Alloy Cast Steel Co.*, 117 F.2d 302, 303 (6th Cir. 1941);

*NLRB v. American Potash and Chemical Corp.*, 98 F.2d 488, 495 (9th Cir. 1938), cert. denied 306 U.S. 643, 83 L.ed. 1043 (1939).

**D. Decisions Arising Under the Sherman Anti-Trust Act and the Fair Labor Standards Act are Inapposite in Determining the Scope of Authority Granted to the National Labor Relations Board by the National Labor Relations Act**

The court below found support for its holding in *United States v. Yellow Cab Co.*, 332 U.S. 218, 91 L.ed. 2010 (1947), a case arising under the Sherman Anti-Trust Act, 26 Stat. 209, as amended, 15 U.S.C., Sec. 1 *et seq., and Mateo v. Auto Rental Co.*, 240 F.2d 831 (9th Cir. 1957), a case arising under the Fair Labor Standards Act, 52 Stat. 1060, as amended, 29 U.S.C. Sec. 201, *et seq.* The court below relied heavily upon the *Yellow Cab Co.* decision, considering it as "appropriate authority for the position we here take" (R. 65).

Petitioners respectfully submit that both the *Yellow Cab Co.* and *Mateo* cases, *supra*, are inapposite to the issue of whether the activities of the Seattle Yellow Cab system are subject to the National Labor Relations Board. The two federal statutes involved in those cases are not similar in scope to the National Labor Relations Act.

In *United States v. Yellow Cab Company, supra*, the issue for this Court's resolution was whether a com-

plaint stated a cause of action under the Sherman Act, which prohibits contracts or conspiracies "in restraint of trade or commerce among the several states." The complaint alleged, in part, that the defendant had conspired to monopolize the taxicab business in the City of Chicago. This business was asserted to have an interstate character because the taxicabs involved, in the course of their ordinary operations in and around Chicago, took passengers to and from the Chicago railroad stations.[13]

This court held that these allegations were not sufficient to state a cause of action under the Sherman Act for, in this court's view, the transportation of passengers to and from the railroad stations did not constitute "an integral part of interstate commerce." However, the court very carefully pointed out that its decision was based solely upon the facts of the particular case, as applied to the Sherman Act. No other federal act was involved or interpreted. Said the court:

> "We do not mean to establish any absolute rule that local taxicab service to and from railroad stations is completely beyond the reach of federal power or even beyond the scope of the Sherman Act.
>
> * * *
>
> "All that we hold here is that when local taxi-

[13]This court was careful to point out that the taxicab companies involved had "no contractual or other arrangements with the interstate railroads." 332 U.S. 218, 231. This alone would distinguish the *Yellow Cab* case from the instant case. Here, the trips to and from the terminals are made pursuant to franchise or concession agreements which give the taxicab company the exclusive right to service the terminals and which require the company to maintain adequate service at the terminals.

> cabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation. And a restraint on or monopoly of that general local service, without more, is not proscribed by the Sherman Act." 332 U.S. 218, 232-233.

Thus, this court in the *Yellow Cab* case was not called upon to decide whether certain activities of a taxicab company, in transporting passengers to and from railroad stations in the City of Chicago, might "affect commerce," within the meaning of the National Labor Relations Act. For this reason, petitioners contend that the *Yellow Cab* decision does not support the judgment below.

Petitioners also contend that the judgment of the court below receives no support from *Mateo v. Auto Rental Company, supra*. Here the issue was whether the drivers of vehicles taking passengers to and from the Honolulu airport were "engaged in commerce" within the meaning of the Fair Labor Standards Act. The court did not have before it, nor did it pass upon, the issue of whether the operations of these drivers might "affect commerce." Indeed, the court took pains to point out that such an issue was not involved in the case:

> "Our analysis of the applicable law must of necessity commence with the statutory language (of the Fair Labor Standards Act). We note initially that Congress has not legislated to the constitutional limits of the commerce power, but has instead restricted the purview of the Act to those

> 'engaged in commerce.' It is not enough that the activity affect commerce; the employee must actually be engaged in interstate commerce. We therefore set aside considerations which govern the determination of those cases dealing with the broader 'affect' concept. Neither do we regard as relevant those cases involving the 'production of goods for commerce' provision. Of these three different phrases used in connection with the commerce power, the one with which we are concerned is the narrowest in scope."

Accordingly, the *Mateo* decision is inapposite to the issues in the instant case. It is to be noted, in this connection, that the National Labor Relations Board has refused to consider decisions arising under the Fair Labor Standards Act, in determining the exercise of its own jurisdiction. See *Roane-Anderson Company*, 77 NLRB 953 (1948).

For the foregoing reasons petitioners submit that decisions arising under the Sherman Act and the Fair Labor Standards Act are inapposite to the issue of whether the activities of the Seattle Yellow Cab system, in the instant case, fall within the scope of the National Labor Relations Act and are subject to the National Labor Relations Board.

## CONCLUSION

Petitioners submit, for the reasons stated herein, that the court below erred in ruling that the Seattle Yellow Cab system is not subject to the jurisdiction of the National Labor Relations Board.

Wherefore, petitioners respectfully pray that the judgment of the court below be reversed.

Respectfully submitted,

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# APPENDIX

## 1. PRESS RELEASE OF NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BOARD
Washington, D. C.

FOR IMMEDIATE RELEASE (R-576)
THURSDAY, OCTOBER 2, 1958

### N.L.R.B. ANNOUNCES CHANGES IN EXERCISE OF JURISDICTION

The National Labor Relations Board today announced changes in its standards for determining in which cases the Board will exercise its jurisdiction. The current standards were adopted in July, 1954.

The new standards take immediate effect, applying both to all cases now pending before the Agency and to all cases which may be filed.

The various elements of the new standards will be set forth in decisions rendered by the Board following October 2, 1958.

The Board's action was taken pursuant to its statement of July 22, 1958, wherein the Board: (1) announced certain proposed changes in its standards; and (2) invited briefs or comments by any interested groups, organizations and persons. At that time the Board said:

> "We are taking this action as a consequence of the situation to which the Supreme Court referred in the case of *Guss v. Utah Labor Relations Board*.

Therein the Supreme Court adverted to 'a vast no-man's land, subject to regulation by no agency or court,' and declared: (1) 'Congress is free to change the situation'; and (2) 'The National Labor Relations Board can greatly reduce the area of no-man's land by reasserting its jurisdiction.'

"On Friday (July 18), the Congress voted approval of the Board's appropriation for the fiscal year 1958-1959. The total was $13,100,000, of which $1,500,000 took into allowance the extension of the Board's jurisdiction into some of the area covered by the so-called no-man's land.

"Today, we are announcing this action, so that more individuals, labor organizations and employers may invoke the rights and protections afforded by the statute."

Following are the new standards which revise somewhat the proposals set forth in the July announcement:

* * *

4. *Instrumentalities links and channels of Interstate Commerce:* $50,000 from interstate (or linkage) part of enterprise, or from services performed for employers in commerce.

* * *

6. *Transit systems:* $250,000 gross volume.[2]

[2] Except taxicabs, as to which the retail ($500,000 gross volume of business) test shall apply.

* * *

## 2. DECISION OF THE NATIONAL LABOR RELATIONS BOARD IN THE *CAB SERVICES, INC.*, CASE 123 NLRB No. 19

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

| | |
|---|---|
| CAB SERVICES, INC., d/b/a RED AND WHITE CAB COMPANY,[1] *Employer*, and CHAUFFEURS AND ASSOCIATED WORKERS UNION, *Petitioner*. | Case No. 18-RC-3779 Issued Mar. 9, 1959 |

### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Clarence A. Meter, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in the taxicab business in Minneapolis, Minnesota, operating about 48 cabs, 38 of which are owned by the individual owner-drivers who are the shareholders in Cab Services; the remain-

[1] Cab Services, Inc., is a Minnesota corporation, all of whose shareholders are cab owners who are also associated together in an unincorporated group known as Red and White Airway Taxicab Association. All parties agree that the operations of the corporation and the association are closely integrated, and that they constitute a single Employer.

ing cabs are owned by the corporation itself or by the Red and White Airway Taxicab Association. The Employer's annual gross volumes of business is in excess of $700,000. The gas an oil used in the Employer's operations, to the value of $60,000 per year, is purchased from sources which obtain it from outside Minnesota. The Intervenor contends that the Board should not assert jurisdiction here, because the contract between the Intervenor and the Employer, which the former urges as a bar, was entered into on the assumption that the rules of interpretation of the Minnesota Department of Labor would be applicable. In view of the Board's decision to apply its revised jurisdictional standards to all pending cases,[2] and as the Employer's volume of business exceeds the $500,000 minimum prescribed for retail enterprises, including taxicab companies, we find that it will effectuate the policies of the Act to assert jurisdiction herein.[3]

2. The labor organizations involved claim to represent certain employees of the Employer.[4]

3. The Intervenor contends that a current contract between it and the Employer is a bar to this petition. The contract, effective from February 15, 1958, to February 15, 1960, is a supplement to an existing "master agreement" between the parties. The Petitioner asserts that the contract is not a bar because the master agree-

[2] *Siemons Mailing Service*, 122 NLRB No. 13.

[3] *Carolina Supplies and Cement Co.*, 122 NLRB No. 17, fn. 5.

[4] Minneapolis Taxicab Drivers, Livery Chauffeurs, Ambulance Drivers and Helpers Union, Local 958, I.B.T.C.W. & H. of A., referred to herein as the Intervenor, was permitted to intervene on the basis of its contractual relationship with the Employer.

ment contains an invalid union-security clause. The provision in question is contained in Section 1, paragraph A, of the master agreement, and reads as follows:

> "A. The Union shall be the sole representative of all employees covered by this agreement in collective bargaining with the Employer. There shall be no discrimination against any employee because of Union affiliation. The Employer agrees that after a Forty (40) day qualifying period, all new employees shall become members of the Union. In the event that the Union notifies the Employer that any of the drivers are not members in good standing with the Union, it shall be the duty of the Employer to discharge any such driver."

The contract fails to grant the requisite 30-day grace period during which non-member incumbent employees need not join the Intervenor. It thereby fails to conform to Section 8(a)(3) of the Act, and may not, therefore, serve as a bar to this petition.[5] We do not, in these circumstances, pass on other grounds urged by the Petitioner for finding the contract not a bar.

4. The parties agree that all taxicab drivers, servicemen, dispatchers and order takers employed by the Company constitute an appropriate unit. The Petitioner and Intervenor would also include, while the Employer would exclude, the owner-drivers.

Red and White Airway Taxicab Association is an organization comprised of 31 taxicab drivers, each of whom owns at least one cab. The Association itself owns 8 cabs. Each member of the Association owns a share of

[5] *Keystone Coat, Apron & Towel Supply Company*, 121 NLRB No. 125.

stock in Cab Services, Inc., a corporation which owns a building and land on which are located a gasoline station, quarters for drivers, business offices and a dispatching room. Cab Services provides its shareholders with bookkeeping, dispatching and managerial services, legal counsel, representation in labor matters, and facilities for purchasing oil and gasoline. Cab Services also owns 2 cabs. It employs regular, extra, and part-time, or extra-extra, drivers for those shifts when the owner-drivers are not driving, and for all shifts on the cabs owned by itself and the Association. Owners may work longer shifts than other drivers and are not required to work as regularly. They drive only their own cabs. Extra and part-time drivers may be assigned by the Employer to drive any cab available on their shift. The owners keep the receipts earned from their driving, and share the receipts of other drivers of their cabs on a pre-determined basis. The owners pay a fixed weekly amount for the general services rendered by Cab Services. The latter withholds from the receipts due them any amounts necessary to pay social security and income taxes and workmen's compensation and prepares their tax returns on an individual owner basis. Although the owners have been members of the Intervenor, they have not been included in the coverage of the contract between the Intervenor and the Employer.

At yearly shareholder meetings, a board of directors is selected from among the owner-drivers to direct the corporation's affairs and supervise the paid manager who conducts the Employer's routine business. The manager is usually an owner-driver but one who does

no driving while serving in that capacity. The manager hires, fires, and disciplines all drivers other than the owners. The latters' breaches of discipline are referred to the board for decision. Only the shareholders may force an owner to leave the association. The shareholders also reserve to themselves the right to decide disputes between the manager and the board of directors.

Although stock ownership does not alone preclude the inclusion of employee stockholders in a collective bargaining unit with other employees,[6] the Board has excluded them when their stockholding interest gives them an effective voice in the formulation and determination of corporate policy.[7] In the instant case, the owner-drivers are the sole members and stockholders of the Employer, and have an effective voice in determining policy through their selection of the directors who are, themselves, required to be owner-drivers. The stockholders also receive preferential treatment because of their status as owner-drivers, in selection of shifts, and through their freedom from the manager's exercise of disciplinary action against the other drivers. This divergence of proprietary and bargaining interest between stockholders and other drivers requires that the former be excluded from a bargaining unit of employees. Under these circumstances, we shall exclude the owner-drivers from the unit hereinafter found appropriate.

Accordingly, we find that the following employees

[6] *Everett Plywood & Door Corporation*, 105 NLRB 17.

[7] *Brookings Plywood Corporation*, 98 NLRB 794, 798; cf. *Coastal Plywood Company*, 102 NLRB 300.

constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All taxicab drivers, cab servicemen, dispatchers, and order takers of the Employer at its Minneapolis, Minnesota, establishment, including extra drivers, but excluding owner-drivers, office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible but not later than 30 days from the date below. The Regional Director for the Region where this case was heard shall direct and supervise the election, subject to Section 102.69 and 102.70 of the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Those in the military services of the United States, may vote, if they appear in person at the polls. Ineligible to vote are employees who have, since that period, quit or been discharged for cause and have not been rehired or reinstated before the election date and employees on strike who are not entitled to reinstatement. Those eligible shall vote whether they desire to be represented, for collective bargaining purposes, by Chauffeurs and Associated Workers Union; or by Minneapolis Taxicab Drivers, Livery Chauffeurs, Ambulance Drivers and

Helpers Union, Local 958, I.B.T.C.W. & H. of A.; or by neither.

Dated, Washington, D.C.

PHILIP RAY RODGERS, *Member*

STEPHEN S. BEAN, *Member*

JOHN H. FANNING, *Member*

(SEAL) NATIONAL LABOR RELATIONS BOARD

FILED
NOV 30 1959
JAMES R. BROWNING, Clerk

No. 76

In the

# Supreme Court of the United States

OCTOBER TERM, 1959

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, the HONORABLE LLOYD SHORETT, Judge; and TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION No. 465, and GEORGE LANCASTER, its Secretary-Treasurer, *Petitioners*,

vs.

THE STATE OF WASHINGTON on the Relation of Yellow Cab Service, Inc., a corporation, *Respondent*.

ON A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

## BRIEF OF RESPONDENT

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ON A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

## BRIEF OF RESPONDENT

The Respondent, Yellow Cab Service, Inc., takes no exception to the matter set forth by Petitioners in those sections of their Brief entitled "Opinions Below" and "Jurisdiction."

## STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are those included in the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. Secs. 141-187. Pertinent sections of the Act, including some not set forth in Petitioners' Brief, are reproduced in Appendix A, *infra,* pp. 63-68.

Some light is thrown on the issues of this case by the subsequent enactment of the Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257, 86th Congress, 1st Session. The relevant provisions of this statute are reproduced in Appendix B, *infra*, p. 69.

## QUESTION PRESENTED

Respondent submits that the question presented is properly to be stated as follows:

Do the courts of the State of Washington have jurisdiction, in the face of a claim that such jurisdiction is lodged exclusively in the National Labor Relations Board, to determine whether a cooperative corporation servicing 118 small separately owned taxicab companies should be granted relief under the law of that state against a strike, and peaceful picketing incident thereto, called by a union representing dispatchers employed by said service company where:

1. Neither the service company, nor any of the taxicab companies it services, conducts business across state lines;
2. The 118 separately owned taxicab companies have an aggregate annual gross business of $1,429,914.02 (or an average of $12,117.92 per company) including more than $156,062.40 received pursuant to franchises granting exclusive rights to pick up passengers at certain railroad, airline and steamship terminals;
3. Only 1/10 of 1% of the combined gross revenues of the 118 separately owned taxicab companies — a mere $1,436.55 per year for all, or an average of $12.17 per company per year — is derived from

the transfer of passengers, traveling on "through" tickets, from railroad terminals to steamship docks; and

4. There is no evidence whatsoever that the strike has burdened or obstructed or tends to burden or obstruct commerce or the free flow of commerce within the purview of the National Labor Relations Act?

The court below answered this question in the affirmative.

## STATEMENT OF THE CASE

Much of the statement of the case set forth in the Brief of Petitioners is correct. We believe there are a number of errors and distortions in emphasis, however, particularly with respect to matters which are urged as supporting Petitioners' contention that Respondent dominates the affairs of the 118 separate taxicab companies.

We submit that a fairer and more objective statement of the case is found in the opinion of the Supreme Court of the State of Washington (R. 61-62, 63-64) and suggest that reference be made thereto. In addition, we believe the following specific references to portions of the record bearing on important issues in the case will be of help to the Court. Throughout this brief we have used "Petitioners" and "Respondent" to refer to the real parties in interest, to-wit, Taxicab Drivers and Chauffeurs Local Union No. 465 and George Lancaster, its secretary-treasurer, and Yellow Cab Service, Inc., respectively.

At page 4 of Petitioners' Brief they refer, in the first subheading of their statement of the case, to "The Seattle Yellow Cab Enterprise." This reflects an attitude toward the facts, or an interpretation of the evidence, which runs throughout their statement and underlies their entire argument. Although the phrases "one enterprise" or "one operation" were employed by the trial court, we submit that this is misleading insofar as the use of the word "enterprise" implies a single, unified business entity. On the undisputed facts, this case involves a cooperative operation in which 118 small, separately owned taxicab companies (with a total of 120 cabs) operate under a common color, employ a central dispatching system, enjoy certain franchises held for them by Respondent as an agency created to assist them, and benefit from the accounting, advertising, insurance and other services furnished by Respondent. While the obvious fact that the 118 separate companies have some mutuality of interest may provide the basis for an argument that they should be regarded as a unit for certain purposes, it must never be forgotten that for legal purposes, and most others, they are completely separate and distinct in character. They are licensed separately, taxed separately, and rise or fall separately as far as their economic success is concerned. There is no pooling of the revenues earned by the 118 companies, and half may show substantial profits while the rest suffer serious losses (R. 18, 20, 28-29, 46, 73-76, 80-83, 88-91, 108-109, 128, 151-152, 219). The union seems reluctant to recognize this changing pattern in the taxicab business because it requires

changes on the part of the union as well. Instead it apparently prefers to maintain the illusion that it is dealing with one big employer rather than many small ones, most of whom were once members of the union. So Petitioners speak of "the Yellow Cab enterprise" and of "an integrated taxicab service" in an effort to obscure the diversity in ownership and the broad sharing in control which have replaced an earlier unity in the taxicab business.

At page 9 of Petitioners' Brief it is stated that certain authority conferred on Respondent's personnel manager by the owners of the 118 taxicab companies with respect to employed drivers has been "extensively" exercised and that by reason of assignments made by him, there is "considerable" interchange of employees from cab to cab. While the record shows that the personnel manager exercises such powers — under authority delegated by the owner-drivers, and usually in consultation with them—there is no basis for these quantitative characterizations of his actions (R. 33, 172-174, 177-178; Def's. Ex. 22; R. 101, 107, 256). As to the latter point, in fact, the personnel manager testified that he assigned employees to the various owners "occasionally" (R. 178), and that the one individual shown to have driven a number of cabs was not typical because he was in ill health and couldn't work regularly (R. 182).

In the last paragraph on page 10 Petitioners state that Respondent has a five-man board of directors, three of whom represent the Yellow Cab Company (the old partnership) and two of whom represent the

118 operating companies. This is literally true, but does not represent the full truth. In fact, two of the directors representing the partnership are never in town, so although the partnership could control the service company if necessary to the preservation of their security interests, in practice they do not (R. 42, 105). In fact, it is clear from the whole record that the owner-drivers—through their representatives on the board of directors, through monthly meetings of all owner-drivers, and through an operating committee which can act between meetings—actually control the day-to-day detailed operation of their respective businesses, including the joint activities carried on through Respondent (R. 33, 54-55, 92, 93-95, 97-98, 100, 102-103, 104, 106, 132, 135-136, 139, 143, 162, 173, 184, 186-189, 195, 219-223, 224, 226, 232). It is conceded, of course, that Respondent also encompasses security interests of the partners who formerly owned the cabs, as was noted by the courts below (R. 41, 61). However, this does not touch upon the question of control of day-to-day taxicab operations, nor upon the issue of whether all of these companies should be lumped together as a single entity for purposes of this case.

At page 15, Petitioners say that as a condition to agreeing to a new labor contract in the period of negotiations preceding the strike, the union asked the 118 Taxicab companies *and* Respondent to settle several pending grievances which had arisen under the prior contract. Again, this is true, but not the whole truth, because these grievances were directed toward the operating companies and involved their employed drivers

—none of them concerned Respondent or its dispatcher employees, as the trial judge noted (R. 165, 167-168). And Petitioners neglect to state that Respondent, as well as some 19 of the operating companies, have signed the form of contract tendered to them by the union (R. 35, 126, 155, 211; Def's. Ex. 29, R. 126; Def's. Ex. 39, R. 155, 260-278). However, the union returned the signed contract and stated that it would not sign with only part of the Yellow Cab Companies (R. 127; Def's. Ex. 40, R. 156, 157-158, 278-279). The union has consistently refused to recognize the right of certain of the owner-drivers, who are self-employed businessmen, to "single-shift" — that is, to operate their cabs for only the one shift which they drive themselves. Instead, it insists that a driver must be employed for one shift every day a cab is operated. Although this does not affect Respondent, which hires no drivers, and although it and 19 of the operating companies agreed to the contract including this provision, the union refuses to terminate its picketing as to these separate companies unless and until all sign, including those who find it more advantageous not to employ drivers (R. 35, 163-164, 167-169; Def's. Ex. 39, R. 155, 260-278). As is argued below, this is contrary to the public policy of the State of Washington.

At page 17 of their brief, Petitioners state that contemporaneously with the filing of Respondent's complaint, the latter obtained an order requiring Petitioners to appear and show cause why a temporary injunction should not issue pending a trial on the merits of the request for a permanent injunction. This is not ac-

curate—the order required Petitioners to show cause why a *permanent* injunction should not issue (R. 6). This is important, because the result was that, in sharp distinction from many similar cases, no *ex parte* or temporary relief was obtained. As a consequence, no judicial order has ever been entered which in any way restricted the union's freedom to picket. There is therefore no need to speculate as to the impact of this labor dispute upon interstate commerce. The picketing was in its twenty-fourth day when the proceedings in the trial court came to an end. If the strike and the concomitant picketing had any effect upon interstate commerce, the burden was upon Petitioners, who had asserted the exclusive jurisdiction of the National Labor Relations Board, to prove this essential condition to federal power in this field. *There is not a shred of evidence in the record that this labor dispute has burdened or obstructed or has tended to burden or obstruct commerce* (R. 66; Pet. Brief, p. 39). In fact, the only picketing shown in the record has been confined to the location of the garage occupied by Respondent (R. 11; Pet. Brief, p. 16) and has not involved any of the air, rail or ship terminals serving interstate transportation agencies. The taxicabs continue to operate, being driven by their owner-drivers (R. 128, 214-215, 228-229). Similarly, there is no evidence of any purchase by Respondent, or the 118 taxicab companies, of products moving in interstate commerce, or the extent to which, if at all, such purchases have been affected by the strike.

It must be kept in mind that neither of the courts

below found or concluded that Respondent and the 118 taxicab companies were anything other than *bona fide* separate legal entities. The trial court concluded, after Petitioners had cited cases of the kind set forth in the footnote on page 26 of their Brief in this Court, that Respondent acts for the 118 companies as their *alter ego*, and that their business ought to be considered as one enterprise or one operation. It should be noted that another Superior Court judge had reached just the opposite conclusion in a lawsuit some six months earlier between most of the 118 taxicab companies and Petitioners herein (Pl's. Ex. 49, R. 239). And the record is clear that the 118 corporations are separately owned and controlled, having no officers or directors in common (except for a few instances where one man owns two or more companies); that Respondent owns no interest in any of the 118 separate companies; that none of the partners of the Yellow Cab Company owns any interest in the 118 corporations nor serves as officer or director therein (R. 32, 46, 61, 123-124, 128-129, 164, 223-225). The Supreme Court of the State of Washington did not pass on this issue, but simply stated that for the consideration of the issue of jurisdiction it had accepted the union's "hypothesis" that Respondent and the 118 operating companies constitute a system that can be treated as an entity (R. 67).

Another significant factor to be kept in mind is that Respondent itself has never been engaged in the operation of taxicabs—and in fact has never owned a cab or employed a driver. Instead, it provides certain services which meet the joint needs of the 118 operating com-

panies, including telephone answering and radio dispatching, accounting, sale of advertising, and assistance in placing insurance. Its revenues—which amounted to $162,988.80 for the period July 1, 1957 through June 30, 1958—come to it not directly from the cab-using public, but are paid over to it by the operating cab companies for the services rendered. Those services are completely local in character and the company's revenues fall below the minimum monetary jurisdictional standards set by the National Labor Relations Board (R. 29, 31, 46, 108-109; Def's. Ex. 24, R. 108, 258; Pet. Brief, pp. 47-48).

There has been no history of joint bargaining through an agent, committee, or association authorized to speak for Respondent and the 118 companies. In 1956 representatives of Respondent and a committee of approximately 25 owner-drivers met with the union to negotiate terms of a proposed agreement, which was then submitted to, and signed by, each of the 118 companies and Respondent separately, each acting with respect to its own employee or employees. Again in 1958, representatives of Respondent and a committee of five owner-drivers negotiated with the union, but with the clear understanding that they could only submit any resulting agreement to the separate companies for individual signature. As is indicated above, Respondent and 19 taxicab companies have signed the proposed agreement (R. 34-35, 47, 55-56, 123-124, 126, 223-225; Pl's. Ex. 29, Def's. Ex. 38, 39, R. 126-127, 155-157, 260-278).

This proceeding was instituted by Respondent in its individual behalf rather than as a representative of the 118 operating companies. It was brought to challenge actions of Petitioners which had deprived Respondent of the services of its ten dispatchers and on allegations that Respondent either had a contract with the union, or was willing to sign one, so that no labor dispute existed between it and the union (R. 1-5, 30). Petitioners seek not only to lump together the revenues of the 118 taxicab companies for jurisdictional purposes but also to combine the separate labor disputes which exist between some of them and the union. It should not be forgotten that the real question here is as to jurisdiction over a labor dispute involving a local service organization with ten striking employees and earning revenues of less than $175,000.00.

## SUMMARY OF ARGUMENT

Petitioners have challenged the jurisdiction of the state courts over this proceeding, their position having been accepted by the trial court but rejected by the court below. Their contention being that the National Labor Relations Board has exclusive jurisdiction of the dispute here in question, they must establish (1) that the strike and picketing substantially affect commerce and (2) that the picketing sought to be enjoined is either proscribed or protected under the National Labor Relations Act. They have failed to do this.

The power of Congress in the area of labor relations rests upon the Commerce Clause, which has had a long and varied interpretative history. In recent years the

pendulum has swung a long way in the direction of expanding the power of the federal goyernment in the field of business regulation at the expense of the authority of the States. However, ours is still a federal system requiring a careful and perceptive balancing of national and local interests and powers. *Kelly v. Washington* (1937) 302 U.S. 1, 82 L.Ed. 3; *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board* (1949) 336 U.S. 301, 93 L.Ed. 691.

Even when Congress acts in a particular field, it is possible that it will not exercise its power to its constitutional limits. While it is conceded that in the National Labor Relations Act Congress has made the legislation coextensive with its power over commerce, nonetheless this Court has held that Congress has dealt only partially with the employer-employee relationship, leaving closely related matters outside the scope of the authority delegated to the National Labor Relations Board and thus subject to regulation by the States. *Bethlehem Steel Co. v. New York State Labor Relations Board* (1947) 330 U.S. 767, 91 L.Ed. 1234; *International Union, UAW v. Wisconsin Employment Relations Board* (1949) 336 U.S. 245, 93 L.Ed. 651; *Weber v. Anheuser-Busch* (1955) 348 U.S. 468, 99 L.Ed. 546. It is our contention that the conduct of the union complained of here falls within this category as matter neither proscribed nor protected by the federal legislation.

Although neither Respondent nor the 118 taxicab companies are directly engaged in interstate commerce, since it is admitted that none of their operations

cross state boundaries, it is true that a very small fraction of the business of the operating companies constitutes a link in such commerce. This involves the transfer, between railway terminals and steamship docks, of passengers traveling on through tickets, which produced revenues of $1,436.55 in the period July 1, 1957, through June 30, 1958—just 1 10th of 1% of the aggregate gross revenues of the 118 companies and an average of $12.17 per company. Even if this is a relevant test in this proceeding involving the labor relations of Respondent alone, so insignificant an item should be dismissed as *de minimis*. *Friedberg v. Pennsylvania Labor Relations Board*, 395 Pa. 294 (Advanced Sheets) 148 A.(2d) 909, certiorari denied 28 Law Week 3107. It fails to meet the National Labor Relations Board's own jurisdictional standard for linkage activities, which specifies a minimum of $50,000.00. NLRB Press Release R-576, Oct. 2, 1958. Congress has recently provided that the Board can, by such action, decline to assert jurisdiction where, in its opinion, the effect of a labor dispute on commerce is not sufficiently substantial to warrant exercise of its authority, and has further provided that state courts may exercise jurisdiction over such disputes. Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257, 86th Congress, 1st Session.

The remainder of the revenues of the 118 operating companies—if that is to be the test—are not derived "in commerce", and could be said, at most, to involve activities "affecting commerce." Petitioners argue, therefore, that federal jurisdiction can be sustained on

this latter ground. This contention must fall, however, because there is no evidence in the record to show that the conduct here in question—the picketing of Respondent's garage—has had any impact whatsoever on the interstate movement of passengers. Failure of proof on this point leaves no basis for a claim of exclusive federal jurisdiction, since the courts of the States are not to be denied power to hear and decide disputes otherwise within their competence merely on the basis of the sort of conjecture and inference contained in the Briefs of Petitioners and of counsel for the National Labor Relations Board.

Further grounds for the conclusion that exclusive jurisdiction over this matter is not lodged in the National Labor Relations Board are provided by the fact that the union's conduct involved here is neither an unfair labor practice specified in Section 8 of the National Labor Relations Act (29 U.S.C. Sec. 158) nor a form of concerted action protected by Sections 7 or 13 of the Act (29 U.S.C. Sections 157, 163). Respondent's complaint is that the union, by its strike and the picketing incidental thereto, is inflicting injury on Respondent—though the latter has signed the contract tendered by the union and there is therefore no labor dispute between them—in order to induce Respondent to compel all of the 118 operating companies to sign the agreement as well. This is claimed to be unlawful coercive action under State law, but does not fall within the carefully drawn specifications of refusal to bargain collectively or of a secondary boycott (29 U.S.C. Sections 158(b)(3) and (4)). As a consequence, even

though the picketing in this case was peaceful, it cannot be claimed to be entitled to the protection of the federal act. *International Brotherhood v. Hanke* (1950) 339 U.S. 470, 94 L.Ed. 995.

In view of all this, it was entirely proper for the State courts to accept this case for the purpose of determining whether it falls within their jurisdiction. The argument that they should have refused to entertain the matter at all upon the mere invocation of the jurisdiction of the National Labor Relations Board would deny them their inherent power to determine their own jurisdiction—and would, in this and many similar fields, reduce them to the status of inferior appendages to federal administrative tribunals. The Supreme Court of the State of Washington having unanimously held that jurisdiction lies in the State courts, its determination should be confirmed for the reasons summarized above.

## ARGUMENT

Respondent brought this action in the state courts rather than before the National Labor Relations Board because it was convinced that this procedure was the proper one. It reached this conclusion not out of any desire to avoid the Board but because of a conviction that the latter did not have jurisdiction of the labor dispute in question and could not grant the relief sought against Petitioners. The latter challenged the trial court's jurisdiction, and in so doing assumed the burden of proving every fact necessary to establish the jurisdiction of the Board, which they contended was

exclusive. They persuaded the trial judge on this issue, but the Supreme Court of the State of Washington ruled adversely to their claim, finding that they had failed to meet this burden.

**I. The Interpretation of the Commerce Clause Has Gone Through a Number of Significant Cycles Throughout Our History But There Is Still Urgent Need for a Sensible and Viable Balance Between Federal and State Authority If Our Federal System Is to Thrive**

In our answer to Petitioners' application for writ of certiorari, we urged that the case was not sufficiently important to require review by this Court because it seemed to us that here, as in no other case heretofore presented to the Court, the doctrine of *de minimis* should certainly apply. In view of the undisputed evidence that neither the cab companies nor the Respondent are engaged in interstate commerce and that only 1/10th of 1% of the total combined gross revenues of the 118 taxicab companies, a mere annual revenue of $1,436.55, is obtained from taxicab business in the flow of interstate passenger travel, it seemed to us to be incredible to assert that the NLRB has exclusive jurisdiction of such a small local enterprise, where 99-9 10% of its business was in intrastate commerce and there was no evidence that the strike and picketing have affected interstate commerce in any way.

The granting of the writ, however, compels us to stress the grave constitutional question which would be presented if this Court were to reverse the unanimous decision of the Supreme Court of the State of Washington and deprive the courts of that State of

any jurisdiction in a labor dispute affecting such wholly intrastate activities.

No precise formulae have been announced by this Court in marking out the boundary between federal and state jurisdictions over commerce. There have, of course, been periods during the life of the Court when the Commerce Clause has been strictly construed, and others, particularly in more recent times, when this clause has been very liberally interpreted in favor of federal jurisdiction. It is understandable why this Court, in modern times, has construed the Commerce Clause to grant to the federal government exclusive jurisdiction as to instrumentalities and fields of interstate commerce which were not known at the time the Constitution was adopted. This is natural and proper, because the Constitution obviously must be construed in the light of conditions now existing and which presumably the founding fathers would regard as within their purpose if they were living today.

On the other hand, despite the extent to which some recent decisions of this Court have gone in expanding federal jurisdiction under the Commerce Clause, it has never been supposed that there does not still remain an area of local commerce beyond the reach of federal agencies and entrusted to the authority of the States. We believe it can be asserted, however, that if this case is reversed, then there will no longer be any balance between federal and state jurisdiction, particularly in the field of labor relations. Instead, state jurisdiction even over purely intrastate commerce will

be obliterated—except possibly for some odds and ends left to the States because the National Labor Relations Board does not choose to be bothered with them.

This is a matter of grave concern to all who cherish our federal system of government, for such a delicately balanced relationship between governments exercising authority in the same territorial area cannot survive if the power of one is thus dependent upon the changing whims of an administrative agency created by the other. The question is not the extent to which Congress has exercised its powers in various enactments in different fields. It is, rather, whether Congress has the right to exercise power over labor disputes affecting purely local businesses and their entirely intrastate transactions to the extent that counsel for the National Labor Relations Board contend in their *amicus* brief in this case.

We would like to discuss some of the major shifts in the judicial pronouncements in this area of constitutional law during the last century and a half. We do not contend that any of the earlier decisions are decisive today, but believe that a reading of them places the constitutional issue in better historical perspective. As a result, this portion of the argument is somewhat longer than otherwise would be the case, and in contrast to the treatment of the issue by Petitioners in their Argument.

It will be recalled that prior to the case of *Gibbons v. Ogden*, 9 Wheat. 1, decided in 1824, the Commerce Clause was construed very narrowly. The term "com

merce," from which the English word "commerce" was derived, was construed to be confined to traffic in goods or merchandise. In his famous opinion in this case, Chief Justice Marshall held that this construction was too restrictive, and that the word included all types of commercial (although not nonprofit) traffic between states, including, in particular, navigation of passenger vessels, which was the subject matter of that case.

In a series of cases commencing with *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 18 How. 421, decided in 1856, this Court greatly broadened the definition of commerce to extend to every type of movement of persons and things, whether for profit or not, and succeeding cases in this line expanded the interpretation of the word to include every kind of commerce, every type of transmission of intelligence, and every species of commercial transaction which sooner or later involved an act of transportation of persons or things or the flow of services across state lines.

In most of the early cases construing the Commerce Clause, it was interpreted primarily as a limitation on the powers of the States. However, the Court has also been called upon, from time to time, to interpret the Commerce Clause as a source of national power and has had recourse, in that connection, to the "necessary and proper clause" of the Constitution.

Before discussing cases which are of primary concern to us because they involve the Taft-Hartley Act and the National Labor Relations Board directly, it

may be well to consider some of the landmark cases under other acts, particularly in the field of antitrust law.

The leading case in this area is the famous "Sugar Trust Case," *United States v. E. C. Knight Co.* (1895) 156 U.S. 1. Here the government asked for the cancellation of certain agreements whereby, through purchases of stock in other companies, the American Sugar Refining Co. had acquired nearly complete control of the manufacture of refined sugar in the United States. Chief Justice Fuller's opinion sets forth the conception of the federal system that controlled the decision:

> "It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for, while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the states as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality."

The doctrine of this case has, of course, been long since overruled. There then developed the new "current of commerce" doctrine, which was enunciated by Justice Holmes in *Swift & Co. v. United States* (1905) 196 U.S. 375, 396. In this opinion, Justice Holmes stated:

> "... commerce among the states is not a technical

legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce."

Let us now turn to a series of important decisions of this Court involving the jurisdiction of the federal government under acts of Congress enacted to counter the depression of the 1930's. One of the most important of these is the famous case of *Schechter Corp. v. United States* (1935) 295 U.S. 495, 79 L.Ed. 1570. This involved constitutionality of the National Industrial Recovery Act and turned on the question whether poultry imported into New York and thereafter processed was still in the current of interstate commerce when the intrastate processing commenced. The Court in effect held that when the poultry arrived at its destination at the Schechter plant in New York, interstate movement had finished and the federal government thereafter had no control over the processing of the poultry. It should be remembered that this was a decision written less than twenty-five years ago by Chief Justice Hughes. The following portion of the opinion is important in connection with this case:

"In determining how far the Federal Government may go in controlling intrastate transactions

upon the ground that they 'affect' interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle. * * * But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of State power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government. Indeed, on such a theory, even the development of the State's commercial facilities would be subject to Federal control. * * * "

May we say parenthetically that we gladly concede the necessity for a strong central government and the overriding need for it to possess sufficient authority to deal with problems beyond the abilities of the States to cope with or vital to over-all national policy. But in purely local matters it cannot be arbitrarily assumed that the national government has a monopoly of competence, and on the contrary it seems clear that it will often be far less concerned with the settlement of purely local problems than the States themselves.

At a subsequent point in his opinion, Justice Hughes stated, in referring to certain previous decisions of the Court:

" * * * While these decisions related to the application of the Federal statute, and not to its con-

stitutional validity, the distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system. Otherwise, as we have said, there would be virtually no limit to the Federal power, and for all practical purposes we should have a completely centralized government."

Similar expressions are found in *United States v. Butler* (1936) 297 U.S. 1, 80 L.Ed. 477, in which the Court invalidated the Agricultural Adjustment Act of 1933, and *Carter v. Carter Coal Co.* (1936) 298 U.S. 238, 80 L.Ed. 1160, in which the Bituminous Coal Conservation Act of 1935 was held unconstitutional. These three cases represent a marked swing in the direction of a strict construction of the powers of Congress under the Commerce Clause and in favor of the recognition of States' rights. However, in a series of subsequent cases the Court has in effect reversed itself, departed from the distinction between direct and indirect effects upon interstate commerce, and returned to the more liberal "current of commerce" doctrine announced in the *Swift* case.

The first of these later cases was that of *National Labor Relations Board v. Jones & Laughlin Steel Corp.* (1937) 301 U.S. 1, 81 L.Ed. 893, concerning the National Labor Relations Act of 1935. We have no quarrel with this case, which is certainly distinguishable on its facts because of the vast industrial empire there involved, which spanned state boundaries and involved substantial movements of goods in interstate commerce. Also of significance in this line of cases were

*United States v. Darby* (1941) 312 U.S. 100, 85 L.Ed. 609, sustaining the validity of the Fair Labor Standards Act of 1938, as well as *United States v. Wrightwood Dairy Co.* (1942) 315 U.S. 110, 86 L.Ed. 726; and *Wickard v. Filburn* (1942) 317 U.S. 111, 87 L.Ed. 122.

Another early case of importance in the labor relations field was that of *Santa Cruz Fruit Packing Co. v. National Labor Relations Board* (1938) 303 U.S. 453, 82 L.Ed. 954. The packing company was engaged in canning, packing and shipping fruits and vegetables, the bulk of which were grown in the State of California. In the year 1935 it had packed about 1,700,000 cases, of which some 37% were shipped in interstate or foreign commerce, although all sales to purchasers outside of the state were made either f.o.b. or c.i.f. San Francisco Bay Area points. Chief Justice Hughes stated the issue and the applicable law as follows:

> "It is also clear that where federal control is sought to be exercised over activities which separately considered are intrastate, it must appear that there is a close and substantial relation to interstate commerce in order to justify the federal intervention for its protection. However difficult in application, this principle is essential to the maintenance of our constitutional system. The subject of federal power is still 'commerce,' and not all commerce but commerce with foreign nations and among the several states. The expansion of enterprise has vastly increased the interests of interstate commerce but the constitutional differentiation still obtains. *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 546, 79 L.Ed. 1570, 1588, 55 S.Ct. 837, 97 A.L.R. 947. 'Activities

local in their immediacy do not become interstate and national because of distant repercussions.' *Id.*, p. 554.

"To express this essential distinction, 'direct' has been contrasted with 'indirect,' and what is 'remote' or 'distant' with what is 'close' and substantial.' Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as 'interstate commerce,' 'due process,' 'equal protection.' In maintaining the balance of the constitutional grants and limitations, it is inevitable that we should define their applications in the gradual process of inclusion and exclusion.

* * *

"'The critical words of the provisions of the National Labor Relations Act in dealing with the described labor practices are 'affecting commerce,' as defined (§ 2(6) ). It is plain that the provision cannot be applied by a mere reference to percentages and the fact that petitioner's sales in interstate and foreign commerce amounted to 37 per cent, and not to more than 50 per cent, of its production cannot be deemed controlling. The question that must be faced under the Act upon particular facts is whether the unfair labor practices involved have such a close and substantial relation to the freedom of interstate commerce from injurious restraint that these practices may constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes."

The *Santa Cruz* case is clearly distinguishable from

this one, first on the ground that 37% of the total production of the packing company there moved *directly* in interstate commerce, whereas here only 1/10th of 1% affects such commerce, and secondly, it remains true, as stated by Chief Justice Hughes, that the unfair labor practices involved must have "a close and substantial relation to the freedom of interstate commerce from injurious restraint."

The cases of *National Labor Relations Board v. Fainblatt* (1939) 306 U.S. 601, 83 L.Ed. 1014, and *National Labor Relations Board v. Bradford Dyeing Assoc.* (1940) 310 U.S. 318, 84 L.Ed. 1226, cited by Petitioners, are important landmarks in labor relations law but are not applicable here. They are clearly distinguishable because they concerned manufacturing plants whose raw materials and finished products moved in interstate commerce and involved a much greater volume than is here presented, and because in the former case clear evidence was offered of actual impact upon such commerce, while the latter case involved purely preventive action by the Board in advance of any work stoppage.

One of the most recent cases dealing with the jurisdiction of the National Labor Relations Board is that of *San Diego Building Trades Council v. Garmon*, — U.S. —, 3 L.Ed.(2d) 775, decided on April 20, 1959. This case seems to go farther than any other in extending the doctrine of exclusive federal jurisdiction in this field, and in our view poses a real threat of virtual elimination of the balance between federal and states rights so eloquently defended in Chief Justice

Hughes' opinion in the *Santa Cruz* case. But even despite the extent to which the *Garmon* case goes in further limiting the jurisdiction of state courts, it is nonetheless clearly not controlling here because in that case the employer partnership, in operating its retail lumberyards, had purchased in the preceding year more than $250,000 worth of materials from outside of California for resale within that state, thereby directly involving itself in interstate commerce. Furthermore, the partnership specifically alleged that it was engaged in interstate commerce, and the question of the possible application of the doctrine *de minimis* was not even raised, probably because in previous decisions of this Court and lower federal courts smaller amounts, both in terms of volume and of percentage, had been held not to be *de minims*. There is no comparison, however, between the $250,000 worth of business involved in the *Garmon* case, on the one hand, and the $1,500 earned by the 118 cab companies from their linkage function in interstate commerce in the instant case.

We believe that Justice Harlan, in his concurring opinion in the *Garmon* case, spoke with prophetic accuracy when he said:

> "Should what the Court now intimates ever come to pass, then indeed state power to redress wrongful acts in the labor field will be reduced to the vanishing point."

We are confident that the Court intends no such drastic departure from past constitutional practice, and are convinced that Congress cannot constitutionally be given such all-encompassing power in the labor field.

The one common thread running through all the cases cited above, including those recognizing broad federal power over commerce, is a real and continuing concern for the preservation of our federal system on a strong and vital basis. This is certainly as important today as ever before in our history.

Difficult though the task may be, a line must be drawn somewhere between the respective powers of the federal government and of the States in the labor field. As Chief Justice Hughes stated in the *Santa Cruz* case, *supra*:

> "The question that must be faced under the Act upon particular facts is whether the unfair labor practices involved have *such a close and substantial relation to the freedom of interstate commerce from injurious restraint* that these practices may constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes." (Emphasis supplied)

To assert that $12 of business per year for a single taxicab company, or $1,500 per year collectively for 118 such companies joined in a cooperative operating system, has or might have a substantial effect upon the flow of interstate commerce is so ludicrous as to warrant no serious consideration. This is particularly true in view of the complete absence of any evidence either (1) that picketing was carried on at any of the transportation terminals affecting interstate commerce, or (2) that such picketing as was done in fact resulted in any obstruction of interstate commerce. This is why

the court below properly held that interstate commerce had not been affected to any appreciable extent and that the National Labor Relations Board therefore did not have exclusive jurisdiction in this case.

As is discussed in later portions of this Brief, Petitioners suggest that undoubtedly the taxicab companies make direct or indirect out-of-state purchases of taxicabs, parts, gasoline, etc. There is, of course, no evidence as to this in the record. But if exclusive federal jurisdiction is to be sustained upon the ground of direct or indirect out-of-state purchases for a wholly intrastate enterprise, then what is left to the states under the reserved powers of the Tenth Amendment? What of the corner drug store? In most instances, probably 90% of its drugs are bought directly from sources outside the state. What about the small shoe repair shop? In most states, the leather it uses is undoubtedly brought in from other states. And what of the local photographer, the local hotel or motel, the local barber shop, the local grocery cooperative, and the many other local businesses which are the backbone of our economy? If they become involved in labor disputes, the effect, if any, upon interstate commerce is so slight that it should not be deemed as conferring exclusive jurisdiction on the National Labor Relations Board. The States are quite competent to deal with such localized disputes and are the natural agencies for the disputants to call on for assistance, which can be more simply, more economically, and more promptly given at the local level. The federal government has larger problems, certainly, to engage its energies, including those large scale disputes

which do substantially affect interstate commerce. There is certainly work enough for both elements in our federal system and it can best be handled, in the interests of the public, if a fair and reasonable balance between state and federal authority and responsibility is maintained.

We believe that the decision below properly respects the line between federal and state power in the labor field and that it should not be disturbed upon this review lest all semblance of balance between state and federal jurisdictions be lost, with serious impact upon our basic constitutional system.

## II. Congress Has Not Undertaken to Regulate all Labor Relations

We recognize that Congress has undertaken, through the provisions of the National Labor Relations Act, to exercise its authority over commerce extensively with respect to the employer-employee relationship, and has therefore drawn this legislation more broadly than was done in the case of the antitrust laws and the Fair Labor Standards Act. But the fact remains that it has sought to deal only with interstate commerce — and that it can deal with nothing more. No gloss upon the constitutional language can obscure the fact that it necessarily implies that there is a body of commerce which is *not* subject to Congressional regulation.

Conceding that Congress has extended its regulation of commerce in the labor field to the limits of its constitutional power, however, does not mean that all phases of the labor-management relationship have

been covered by the National Labor Relations Act. The fact that Congress has just recently seen fit to legislate further on the subject, together with the well-known belief of some that still further regulation is needed, makes it clear that the Labor-Management Relations Act of 1947 was not a comprehensive labor code. This Court has recognized this in a number of cases—and with it the necessary correlative that certain of these unregulated matters are proper subjects for state action.

In *Bethlehem Steel Co. v. New York State Labor Relations Board* (1947) 330 U.S. 767, 773, 91 L.Ed. 1234, the Court recognized that Congress had only partially occupied this field, saying:

> "In the National Labor Relations Act, Congress has sought to reach some aspects of the employer-employee relation out of which such interferences [to commerce] arise. It has dealt with the subject or relationship but partially, and has left outside the scope of its delegation other closely related matters. Where it leaves the employer-employee relation free of regulation in some aspects, it implies that in such matters federal policy is indifferent. . . . However, the power of the state may not so deal with matters left to its control as to stand 'as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'." (Matter in brackets inserted)

The Court there concluded that the New York Board's recognition of foremen's unions was in conflict with the policy of the NLRB and could not stand. But the courts of Washington can deal with the conduct of

the union in this case without creating any obstacle to the accomplishment of the purposes of Congress."

In *Weber v. Anheuser-Busch* (1955) 348 U.S. 468, 480, 99 L.Ed. 546, the Court said:

> "By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces. As to both categories, the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action. Such was the situation in *Garner v. Teamsters, C. & H. Local Union* (U.S. *supra*. But as the opinion in that case recalled, the Labor Management Relations Act 'leaves much to the states, though Congress has refrained from telling us how much.' 346 U.S., at 488. This penumbral area can be rendered progressively clear only by the course of litigation."

See, also, the following cases:

*Allen-Bradley Local v. Wisconsin Employment Relations Board* (1942) 315 U.S. 740, 86 L.Ed. 1154;

*International Union, UAW, v. Wisconsin Labor Relations Board* (1949) 336 U.S. 245, 93 L.Ed. 651;

*Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board* (1949) 336 U.S. 301, 93 L.Ed. 691;

*United Construction Workers v. Laburnum Construction Corp.* (1954) 347 U.S. 656, 98 L.Ed. 1025;

*United A.A. & A.I.W. v. Wisconsin Employment Relations Board* (1956) 351 U.S. 266, 100 L.Ed. 1162;

*International Assoc. of Machinists v. Gonzales* (1958) 356 U.S. 617, 2 L.Ed.(2d) 1018;

*International Union, U.A., A. & A.I.W. v. Russell* (1958) 356 U.S. 634, 2 L.Ed.(2d) 1030.

These cases make it clear that the cry of federal pre-emption is not to be heeded automatically and without critical examination. To the extent that Congress has occupied the labor field it has pre-empted state jurisdiction. But its occupation is only partial, and the same must therefore be true as to the resulting exclusion of state power. It is therefore necessary to see whether Congress has in fact dealt with conduct of the kind here involved and provided a remedy therefor, so as to provide a basis for the contention of Petitioners that it has pre-empted jurisdiction thereover to the exclusion of the States. This requires consideration of the essential bases for the jurisdiction of the National Labor Relations Board which is set up as a bar to state action in this case.

## III. Jurisdiction of The National Labor Relations Board Depends on the Concurrence of Two Essential Facts: (A) Conduct Which Is Either Proscribed or Protected by the Statute, and (B) Demonstration That This Conduct Affects Interstate Commerce

The National Labor Relations Board is not a court of general jurisdiction but an administrative tribunal established to administer a federal statute. It therefore has only the jurisdiction and authority expressly conferred upon it by Congress within the four corners of that statute, and if it be felt that the scope of such jurisdiction and authority should be extended, that can be accomplished only by Congress through an amendment of the law and not by the Board through a press release or otherwise.

The business of the Board is to prevent certain abuses, termed unfair labor practices, which Congress found to have prevailed in connection with labor disputes affecting commerce, and to protect certain rights of employees which Congress found to have been denied in the past, with adverse effects on such commerce. Any party seeking to invoke the assistance of the Board must allege either that his adversary has committed or threatened an unfair labor practice, or that he himself has been, or is about to be, deprived of rights guaranteed by the Act — and must then go on to prove that interstate or foreign commerce is affected.

### A. The Strike and Picketing Here Involved are Neither Proscribed Nor Protected by the Federal Act

Petitioners have satisfied neither of these require-

ments. They made vague assertions in this regard in the state courts, the most specific being a statement in their memorandum filed with the Supreme Court of the State of Washington, as follows:

> "If plaintiff's contentions are true, the union's conduct would constitute a 'refusal to bargain,' or a 'secondary boycott' under the terms of the federal Act, 29 U.S.C. Secs. 158(b)(3) and 158(b)(4)(A).
>
> "If plaintiff's contentions are not true, then the union's conduct would constitute lawful 'concerted activities' which are protected activities under the terms of the federal Act, 29 U.S.C. Secs. 157, 163."

The sections of the statute cited by Petitioners are set forth in Appendix A hereto, p. 67. We submit that it was incumbent upon Petitioners to demonstrate the applicability of one or the other of these sections to the precise facts of this case, since they are the parties asserting the jurisdiction of the National Labor Relations Board. This they have utterly failed to do—for the very good reason, we believe, that it cannot be done.

Let us suppose that Respondent had chosen to complain of the union's action to the Board rather than to the state courts. How could it have brought its case within the very precise language of these statutory provisions? It seems clear to us that it could not properly have pleaded that the union had been guilty of refusing to bargain collectively, and we so advised the trial judge. The scope of the obligation to bargain collectively is fixed by 29 U.S.C. Sec. 158(d), which is also set out in Appendix A hereto. Respondent does not, and cannot,

contend that the union has refused to meet at reasonable times or to confer in good faith with respect to wages, hours, and other terms and conditions of employment. The union has always been willing to meet and negotiate. But Respondent is not now asking the union to bargain further, because the company has already indicated its acquiescence, as to its ten dispatcher employees, to the terms which the union has exacted from others in the cab industry in Seattle. It simply contends that on these facts it has no labor dispute with the union and the latter cannot picket it—a position which has nothing to do with a demand for further collective bargaining.

Similarly, while the union has refused to sign, in its turn, the contract signed by Respondent—and in fact returned the contract to the company—relator cannot honestly claim that this is a "written contract incorporating any agreement reached" within the statutory language making refusal to execute such an agreement a refusal to bargain. The union has always made it perfectly clear that it would not sign this contract with Respondent alone, regardless of the latter's full acceptance of the terms demanded. As a consequence, Respondent cannot fit itself within the statute because there has been no oral meeting of the minds which simply requires reduction to writing. Respondent therefore contends that it is being victimized not by a refusal to bargain, as specified in Sections 158(b)(3) and 158(d), but by an affirmative effort to coerce it to attempt to compel the 118 purchasing corporations to sign the same agreement. We contend this is a wrong

not comprehended in the federal act and for which the state courts should, and would, give redress.

Similarly, if Respondent were to go before the NLRB, it believes it could not, successfully, claim that the union is guilty of a secondary boycott. Though it is clear that the union has induced the employees of Respondent to engage in a strike, the required objective is lacking. Section 158(b)(4)(A), which is the one cited by Petitioners as having possible application, would require Respondent to prove that the union was seeking (1) to force some employer—*i.e.*, one of the owner-drivers—to join some labor or employer organization, or (2) to force some employer or other person to cease using, selling, handling, etc., the products of another or to cease doing business with any other person. Neither of these can be established because (1) the union has made employer membership in the union strictly optional in case an owner-driver desires the benefits of the Union pension fund (R. 208), and no employer organization is involved; and (2) no effort has been made to force Respondent to cease doing business with the purchasing cab companies or vice versa. Indeed, even if Respondent were to cease to do business with a particular purchasing corporation, or in fact with any number of them, this would not satisfy the union and eliminate its pickets. What the union wants Respondent to do is to coerce the purchasing corporations directly in order to make them sign the contract. It insists, in the face of all the evidence, that this whole maze of corporations is a single entity dominated from the top and that Respond-

ent must crack the whip—an instrument which the latter insists it doesn't possess.

Thus, it appears to Respondent that the statutory categories of unfair labor practices to which it is referred by Petitioners simply do not fit its case—nor is it surprising that they do not. These carefully defined practices which the federal act declares to be unfair were the end result of certain common patterns which had developed over the years in the field of labor relations on the national level. But the pattern now developing in the taxicab industry of the sale of centrally owned taxicab fleets to large numbers of owner-drivers is of recent origin, is unique to the taxicab industry, and is not even widely prevalent in this industry itself. It is no wonder, therefore, that it was not anticipated by Congress in 1947 when the Labor Management Relations Act was adopted. Only in the cab industry, so far as we know, is it possible to use two pickets to blockade 119 employing corporations, exerting direct and primary economic pressure against all of them simultaneously.

In other words, as has already been said, the only pressure exerted by the union on Respondent—aside from direct pressure to compel it to pay higher wages, to which it has already assented—is pressure to compel it to coerce, in some undefined way, the signing of the contract by all 118 operating cab companies. Since Respondent does not own these companies and has no contractual right thus to dictate to them, it finds itself in a dilemma. The union states that it will not cease picketing Respondent unless and until it has forced the owner-

operators to sign, but since no means of compelling such action exists, Respondent is faced with indefinite picketing and with the publicizing of the union's "unfair" designation although it has agreed to every demand made by the union with respect to its own employees. Thus Respondent contends that it is the victim of a wrong not contemplated by Congress, not included in the federal act, and therefore not entrusted to the NLRB.

We submit that this being the case, the court below was correct in ruling that the trial court should take jurisdiction of the matter to determine whether the law of the State of Washington provides Respondent a remedy against the action complained of.[1] This Court stated in *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board* (1949) 336 U.S. 301, at 305, 93 L.Ed. 691, that:

> "The States are free (apart from preemption by Congress) to characterize any wrong of any kind by an employer to an employee (and certainly a

[1] It would not be proper, of course, to argue the merits of that issue here. However, it may be appropriate to suggest that the State of Washington has a public policy against the coercive use of picketing which this Court has approved, in two different contexts, in *International Brotherhood v. Hanke* (1950) 339 U.S. 470, 94 L.Ed. 995, and *Building Service Employees International Union v. Gazzam* (1950) 339 U.S. 532, 94 L.Ed. 1045. In essence, the union here seeks to force Respondent to compel the some 20 to 30 owner-drivers who prefer to "single-shift" their cabs to enter into the contract with the union in violation of the policy recognized in the *Hanke* case. In each of these cases the picketing enjoined was peaceful. Similarly, the State has a public policy against picketing where there is no labor dispute. *Morris v. Local Union No. 494* (1951) 39 Wn.(2d) 33, 234 P.(2d) 543, and cases there cited. It should also be noted that Respondent contended below that the picketing was deceptive in that it charged all Yellow cabs with being unfair when 19 of the operating companies, had, like Respondent, signed the contract proffered by the union.

> wrong by a union to an employer as well], whether statutorily created or known to the common law, as an 'unfair labor practice'." (material in bracket inserted).

We submit that since the coercive conduct here involved is not prohibited by the federal act, there has been no pre-emption of state power to deal with it. See also *International Union, U.A.W. v. Wisconsin Employment Relations Board* (1949) 336 U.S. 245, at 254, 93 L.Ed. 651. The union's conduct here is entirely ungoverned unless governable by the State of Washington.

If this conduct is not prohibited by the federal statute, then the National Labor Relations Board does not have jurisdiction. If that is the case, the state courts may take cognizance of the complaint and determine whether the acts of the union violate state law. If they find such a violation, it must follow that the picketing is not privileged, even though peaceful, because there is nothing in 29 U.S.C. Secs. 157 and 163 which sanctions strikes or other concerted action when they are designed to achieve improper coercive results or are carried on to the injury of a party with whom the union has no existing labor dispute. These provisions are intended, rather, to protect employees in the exercise of their concerted economic power in aid of the traditional objectives of better wages, hours and working conditions. Certainly a party having a complaint against a union for which the NLRB can grant no relief would not be required to institute a proceeding before the Board to determine that the conduct complained of is not protected concerted

action as a pre-condition to seeking relief in a state court.[2] On the other hand, if the picketing is defended as an exercise of the right of free speech, this contention can be asserted in the state courts as well as before the NLRB, with ultimate review in this Court to insure protection of any claimed right under the First Amendment to the United States Constitution.[3]

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[2] At page 31 of Petitioners' Brief they argue that if the NLRB's jurisdictional standards are to be challenged, this should be done in a proceeding before the Board and not in state court. This would deny to the courts of the States the right to determine their own jurisdiction, when it has been duly invoked, merely because the defendant alleges that some federal administrative agency has exclusive jurisdiction of the matter. We do not think the courts are to be downgraded in this way. The cases cited by Petitioners in this connection, *Newport News Shipbuilding Co. v. Schauffler* (1938) 303 U.S. 54, 82 L.Ed. 646 and *Meyers v. Bethlehem Ship Building Corp.* (1938) 303 U.S. 41, 82 L.Ed. 638, are distinguishable. They involved situations where proceedings had been brought before the NLRB by labor unions and the employers then went into federal district court to enjoin the Board from acting, on the claim that interstate commerce was not affected. This Court held that the employers had to exhaust their administrative remedies, asserting their claims before the Board and appealing if the ruling were adverse. That is certainly far different from a claim that an employer cannot proceed in a state court because the defendant union challenges the court's jurisdiction on a claim that exclusive jurisdiction lies with the Board—though that jurisdiction has been invoked by no one.

This court recently denied certiorari (28 Law Week 3118) in the case of *Retail Clerks Union v. California Superior Court*, 44 LRRM 2161. It thereby permitted to stand a decision by the California Supreme Court holding (1) that a state court can determine the facts necessary to a decision as to its jurisdiction in the face of a claim of exclusive jurisdiction in the NLRB, and (2) that more is required to establish such federal jurisdiction than mere allegations that interstate commerce is affected.

[3] At pages 24-27 of their Brief, Petitioners argue that the Board has exclusive jurisdiction to pass on the lawfulness of peaceful strikes and picketing "in all industries affecting commerce." This contention is unsound for two reasons: first, because it mis-states the statute by suggesting that the jurisdictional test is whether the "industry" concerned affects commerce when the critical issue is whether the unfair labor practice involved does so (see *infra*, pp. 49, 55-56), and second, because it *assumes* that which must be proved, namely that commerce *is* affected.

**B. The Strike and Picketing Here Involved Do Not Affect Interstate Commerce**

**(1) The derivation of gross annual revenues of $1,436.55 from "Linkage" services to interstate passengers by 118 separate taxicab companies is de minimis and does not confer exclusive jurisdiction on the National Labor Relations Board**

None of the Respondent's business activities is "in commerce" or directly involves interstate movements of persons or commodities. Even if jurisdiction over the present dispute is to be determined by reference to the aggregate operations of the 118 separate taxicab companies,[4] only a very insignificant part of their

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None of the seven cases cited at page 25 of the Brief are relevant here because they all clearly involved conduct affecting, or tending to affect, interstate commerce, and which was either proscribed by the federal act or protected because directed toward legitimate ends. Neither of these is true in this case.

[4] As is indicated in the Statement of the Case, the Court below accepted the union's "hypothesis" that Respondent and the 118 operating companies constitute a system which can be treated as an entity, but expressly did not so decide (R. 67). In Note 4 at page 26 of their Brief, Petitioners cite eight NLRB cases as supporting the trial court's ruling that the revenues of Respondent and the 118 taxicab companies can be lumped together for purposes of trying to establish jurisdiction in the Board. We believe all of these cases are distinguishable on one or more of the following grounds: (1) Several involve no lumping of revenues, and in fact no question as to the Board's jurisdiction at all; (2) in others all parties agreed that the different companies involved constituted a single employer; (3) in some there was substantial identity of stockholders, officers and directors among the companies; (4) in some there was substantial control of the operations, and particularly the personnel policies, of a number of corporations by one dominant corporation, and (5) in some there had been an extensive record of joint labor negotiations. Petitioners insist that Mr. Wenck, Respondent's president, still dominates and runs a single taxicab company having 120 cabs just as he did when he was resident partner of the Yellow Cab Company prior to the liquidation of that firm in 1956. They ignore all the legal instruments which have been executed in carrying out that liquidation and all the money the owner-drivers have paid in that connection. They ignore the day-to-day control of cab operations by the owner-drivers and their

business falls into this category. It is agreed that the operating companies enjoy the exclusive right to transfer through-passengers and their baggage between the railroad terminals and the Canadian Pacific Steamship Dock, and that they derived aggregate gross revenues from this business of $1,436.55 during the year July 1, 1957, to June 30, 1958. This amounts to a mere 1/10 of 1% of their total gross revenues for that year and to only $12.17 per year per company. We submit that this is *de minimis* and cannot provide the basis for a claim that the state courts are ousted of all jurisdiction in this case.

In *National Labor Relations Board v. Fainblatt* (1939) 306 U.S. 601, 83 L.Ed. 1014, question was raised as to the application of the National Labor Relations Act to an employer who contended that the volume of commerce involved (the shipment of thousands of finished garments per month across state lines) was too small to come within the jurisdiction of the NLRB. The Court stated, at page 607:

> "Examining the Act in the light of its purpose and of the circumstances in which it must be applied we can perceive no basis for inferring any intention of Congress to make the operation of the Act depend on any particular volume of commerce

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designated representatives. They can see only one entity for labor purposes although the corporate, taxing, licensing and other agencies of the City of Seattle and the State of Washington have no difficulty recognizing 119 separate entities. We believe that a reading of the record will demonstrate that this multiple view of things is correct and that Petitioners' conception of the situation in one formed by a desire to return to conditions as they once were, but are no more. In this connection, see *State v. Northwest Magnesite Co.* (1947) 28 Wn.(2d) 1, 182 P.(2d) 643.

affected *more than that to which courts would apply the maxim de minimis.*" (Emphasis supplied)

It is clear, therefore, that there *are* cases in which the commerce involved is too insignificant to justify the exertion of federal power—and that the doctrine "*de minimis non curat lex*" applies in the field of federal regulation of labor relations.

We submit that this is such a case, for if not it would be hard to imagine a case in which this salutary rule would be applied. In *Friedberg v. Pennsylvania Labor Relations Board*, 395 Pa. 294 (Advance Sheets), 148 A.(2d) 909, the Supreme Court of Pennsylvania held that the National Labor Relations Board did not have jurisdiction, thus permitting the Pennsylvania Board to handle the case. The employer there involved operated a window cleaning service doing a gross annual business of some $40,000. Of this, $12,162 was business done for twenty-five firms engaged in interstate commerce, including railroads, truck lines, and manufacturers of products shipped in commerce. The Pennsylvania Supreme Court held this to be *de minimis*, remarking that the business of the employer was so trivial that if the doctrine did not apply there, it had no meaning. Appeal was taken to this Court and the *de minimis* issue clearly raised. This Court, in a *per curiam* opinion, recently dismissed the appeal and, treating the papers on which the appeal was taken as a petition for writ of certiorari, denied certiorari. 28 Law Week 3107. Since both the dollar amount involved and the percentage of the total business were larger there

than in the instant case, we submit that a like ruling should be made here.

Petitioners cite only one case (page 33 of their brief) on the issue of whether this "linkage" revenue is *de minimis*, and that is *NLRB v. Suburban Lumber Co.* (CCA3-1941) 121 F.(2d) 829. The court there did state, as indicated, that *de minimis* has always been taken to mean matters of a few dollars or less. However, the actual holding of the case was that annual purchases of lumber amounting to $150,000, most of it coming from other states, could not be considered in the category of *de minimis*. Certainly the sum here involved is so much more trifling that the *Suburban* case is clearly to be distinguished.

The *amicus* brief of counsel for the National Labor Relations Board, at page 14, cites the additional case of *International Brotherhood of Electrical Workers v. National Labor Relations Board* (CA2-1950) 181 F.(2d) 34, affirmed, 341 U.S. 694, 95 L.Ed. 1299. As is there pointed out by counsel, the Court of Appeals held that the Board had jurisdiction of a secondary boycott against a non-union New York contractor whose work on the construction of a house in Connecticut was valued at only $325. However, it is apparent from a reading of the full opinion that the court did not hold that pecuniary sum sufficient to establish jurisdiction in the Board. It considered the contractor's over-all operations and pointed out that he actually had to cross state lines to perform the work, that he had to transport materials across the line to the job, and that his "general business required him con-

tinuously to import *substantial amounts* of material from other states into New York, and he did a *substantial amount of work* in Connecticut *in addition to the job in question*, as well as work for large contractors *whose own interstate activities were very large indeed.*" (Emphasis supplied) It is also noted that the general contractor's headquarters was likewise in New York, that he, too, had to travel into Connecticut and bring in materials for the job, and that his business also "extended into other states in substantial amounts." It is therefore clear that jurisdiction turned on much more than a single $325 job, and that the case is not authority against our contention that the sum here in question is *de minimis*.

Authority on this point, and in support of our position, is to be found in the very NLRB press release relied on so heavily by Petitioners as establishing that the Board would take jurisdiction of this case. Both Petitioners and the Board set forth what they regard as applicable portions of the Board's Press Release No. 576, dated October 2, 1958 (Petitioner's Brief, pp. 47-48; the Board's Brief, p. 18). Of the ten categories for which new standards for the exercise of the Board's jurisdiction were announced, two are set out in each case. One involves a straight gross volume standard which is discussed below. The other, which is relevant here, reads as follows:

> "4. *Instrumentalities, links and channels of Interstate Commerce:* $50,000 from interstate (or linkage) part of enterprise, or from services performed for employers in commerce."

Obviously the only possible applicability of this provision to this case would be in connection with the $1,436.55 of direct "linkage" revenues realized by the 118 operating companies from the transfer of through-passengers between the railway terminals and the Canadian Pacific Dock.[5] This is clearly far less than the minimum set by the Board itself with regard to such revenues. The Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257, 86th Congress, 1st Session, Section 701 (*infra*, p. 69) expressly authorizes the Board thus to set the limits below which it will decline to exercise jurisdiction and provides, correlatively, that the courts of the States can exercise jurisdiction over labor disputes which the Board declines to accept. This would seem clearly to establish that even when the "linkage" revenues of the 118 taxicab companies are combined they represent such an inconsequential sum that both the Board and the Congress have recognized it as *de minimis* and, there-

[5] Petitioners (Brief, pp. 35-37) and counsel for the Board (Brief, pp. 13, 18) seek to ignore the distinction between this business and the more extensive business of simply hauling passengers to and from rail, air and steamship terminals, and attempt to meet this "linkage" jurisdictional standard of the Board by lumping the revenues from both classes of business together. This is clearly improper. *United States v. Yellow Cab Co.* (1947) 332 U.S. 218, 91 L.Ed. 2010, relied upon by the court below and cited in the briefs of Petitioners and of counsel for the Board, clearly holds that the transfer of through-passengers between terminals is "in commerce" but that general taxicab service to interstate terminals is *not* "in commerce." Since the $50,000 jurisdictional standard here in question relates to "instrumentalities, links, and channels of interstate commerce," it is clear that it refers only to the former category and does not include revenues from services which are merely local adjuncts to interstate commerce. This latter activity is not "in commerce" and at most can be claimed to affect commerce. Neither *Red Cab, Inc.* (1950) 92 NLRB 175, nor *Garner v. Teamsters Local Union No. 776* (1953) 346 U.S. 485, 98 L.Ed. 228, cited by Petitioners on this point in any way impairs the authority of the *Yellow Cab* case, *supra*, on this issue.

fore properly to be left to the jurisdiction of the state courts.[6]

**(2) The activities of the union complained of here have not affected commerce and therefore do not come within the jurisdiction of the National Labor Relations Board**

There is still a further basis for the holding of the court below that the National Labor Relations Board does not have exclusive jurisdiction of the union conduct here in question, namely, that said conduct has not affected interstate commerce in any way. The Court said (R. 67):

> "If it be conceded that one-tenth of one per cent of its total operations is in interstate commerce, we do not believe that Seattle's Yellow Cab system constitutes such an integral step in the interstate

[6] Petitioners (Brief, p. 30) and counsel for the Board (Brief, p. 19) contend that this action of Congress "froze" the jurisdictional standards of the Board as of August 1, 1959, or incorporated them into the Act—and that this indicates Congressional approval of the Board's determination that "taxicab companies of this size are obviously engaged in an industry 'affecting commerce'." We would point out again that jurisdiction depends not on whether an industry affects commerce but whether an unfair labor practice does so; and if this is all so "obvious," it could, and should, have been proved. Furthermore, it is clear that Congress neither intended to, nor could constitutionally, extend the Board's jurisdiction beyond its previous scope, which already comprehended the federal government's full power over commerce. The fact remains that it is effect on commerce, not mere size of the business, which determines the Board's jurisdiction. See Note 7, below. In this provision, Congress was approving the Board's restriction of its jurisdiction—and, as a concomitant, recognizing the power of the States to act with respect to the areas thus relinquished—and was not in any sense acting to extend the reach of the Board's power. There is nothing to indicate approval of specific Board standards, but merely that its delimitation of its authority should not be carried beyond the standards, whatever they might be, as of the date indicated. We do not see how this can be tortured into confirmation of a standard announced by the Board unless that standard was already a valid one.

> movement of passenger traffic as to be considered as being in interstate commerce, *nor* that any unfair labor practices whether by the union or the Yellow Cab system burden or obstruct interstate commerce." (Emphasis supplied)

This is a clear holding (1) that the revenues from the transfer of through-passengers are *de minimis* and (2) that the derivation of more substantial revenues from the movement of passengers to and from the airports, railway terminals and docks (R. 61-62) does not create jurisdiction in the Board because no burden or obstruction to commerce was shown to have been caused by the strike and picketing.

The statutory provision conferring jurisdiction on the Board with respect to labor disputes (as distinguished from representation elections) is Section 10(a) (29 U.S.C. Sec. 160 (a)) reading as follows:

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce."

It is therefore clear that its jurisdiction extends only to conduct "affecting commerce," and that phrase is defined in Section 2(7) (29 U.S.C. Sec. 152(7)) as follows:

> "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

The term "commerce" is defined, in turn, in Section 2(6) (29 U.S.C. Sec. 152(6)):

> "The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several states * * *."

Since Respondent's activities are not "in commerce" and since the revenues even of the 118 operating companies from activities in that category are *de minimis*, it is clear that any claim of jurisdiction in the Board must depend on a showing that commerce has been affected by conduct burdening or obstructing it. *There has been no such proof offered in this case.*

The court below said as to this (R. 66):

> "There is no testimony in the record that this strike has impaired taxicab service to or from the railroad terminals, airports, and docks, and hence no evidence of any effect upon interstate commerce sufficient to justify the application of the National Labor Relations Act. *United States v. Yellow Cab Co., supra.* No such circumstance is present in this case."

Petitioners concede this at page 39 of their brief, where they say:

> "In holding that the Seattle Yellow Cab system was not subject to the jurisdiction of the National Labor Relations Board, the court below was influenced by *the fact* that there was *no evidence in the record* indicating that the strike and picketing of petitioner Local 465 had interfered with the transportation of passengers to and from the railroad, airline and steamship terminals and *thus no evidence that commerce was actually burdened or obstructed* (R. 66)." (Emphasis supplied)

Petitioners noted certain statements of Respondent's

president, but none of these referred to impact on cab service to and from the terminals serving interstate carriers. Petitioners have therefore sought to correct this deficiency by making strong assertions that the Board would assume jurisdiction over this dispute under its current jurisdictional standards,[7] by indulg-

[7] See pages 28-30 and 47-55 of Petitioners' Brief, as well as pages 17-18 of the brief of counsel for the Board. The "linkage" standard of $50,000 has already been discussed. The other standard quoted in both briefs is that whereby, through a footnote in category 6, "Transit Systems," the Board's press release of October 2, 1958 indicated that it would take jurisdiction of taxicab companies satisfying the "retail test," which simply requires an annual gross business of $500,000. We do not suppose it will be contended that the Board, by the mere incantation of large figures, can extend its jurisdiction one iota beyond that specified by Congress. As indicated above, the standard set by Congress depends upon the occurrence of an unfair labor practice which affects commerce. It follows, therefore, that if a taxicab company does ten times $500,000 worth of business a year but the unfair labor practice complained of does not affect commerce, then the Board has no jurisdiction. (See the opinion of the court below, R. 63) Whatever may be the validity of assuming that a retail store doing $500,000 worth of business a year must buy substantial quantities of merchandise originating in other states and which would not be required if the store were shut down by a strike, no basis appears, or is suggested, for concluding that 118 driver-owned cab companies doing a similar gross business could not be involved in a labor dispute without any effect on interstate commerce. In any event, all such presumptions or assumptions become worthless when, as here, a dispute leads to a strike and picketing which cannot be shown to have had any adverse effect on interstate passenger travel.

*Cab Services, Inc.* (1959) 123 NLRB No. 19, cited in both briefs, is distinguishable despite certain surface similarities to this case. In the first place, all parties there agreed that the service agency and the operating entities were closely integrated and that they constituted a single employer—and that is not true here. Secondly, no challenge to the jurisdiction of the Board was made on the grounds of lack of effect on commerce urged here, the central issues in that case being whether an existing contract with one union was a bar to another union's petition for an election and whether owner-drivers were to be excluded from the bargaining unit. Passing reference to taxicab companies not being interstate commerce was made in the brief of counsel for the union asserting the bar, but solely to excuse the union's reliance on state, rather than federal, law concerning permissible union security arrangements. Finally, there was at least some evidence introduced in that case to estab-

ing in inferences and speculations not based on the record," and by the insertion of purported facts in footnotes. But at the same time they have argued—as have counsel for the Board—that no such evidence was necessary in the first place.

lish that the employer purchased substantial amounts of gas and oil from sources which obtained it in other states.

It is also noteworthy that Petitioners' (Brief, pp. 35-36) and counsel for the Board (Brief, p. 17, N. 5) have both set forth the extremely spotty record of the Board in dealing with taxicab operations. It should be recalled that while the standards announced in *Cambridge Taxi Co.* (1952) 101 NLRB 1328 (discussed in the Board's Brief) were in effect, the Board refused jurisdiction of a company with annual revenues of $2,500,000, of which 20% was derived from serving three railroad stations in Boston. *Checker Taxi Co.* (1953) 107 NLRB No. 85. This was not due to any lack of funds, but simply because the Board did not feel that commerce was affected even by such a large operation so substantially related to interstate terminals—more substantial in both respects than in this case. Thereafter, the Board reverted to its old position that cab companies were essentially local in their operations, stating that "to assert jurisdiction over such enterprises would neither comport with the Congressional intent that the Board refrain from extending its activities to matters of local significance, nor otherwise effectuate the policies of the Act." *Checker Cab Co.* (1954) 110 NLRB 683. There has certainly been no change in the character of the cab business which affects the soundness of that conclusion.

[8] Similarly, deficiencies of proof cannot be supplied by talking about what could have been proved—though this would sometimes make the practice of law much easier. Petitioners (Brief, pp. 30, 39) and counsel for the Board (Brief, p. 15, N. 3) argue that a taxicab company doing a half million dollar yearly business "would undoubtedly make substantial direct or indirect out-of-state purchases" of cabs, parts, and gasoline; that it "cannot be disputed" that the 118 operating Yellow Cab companies make such purchases; and that taxicab systems "often purchase" items which come from out-of-state sources. There are two answers to all of these gentle "suggestions": First, that there is no evidence in the record to sustain them; and second, that even if it were conceded that such purchases are made there is neither evidence nor conjecture to indicate to what extent, if any, they have been influenced in such fashion as to affect commerce. The cabs are still operating, burning gas and oil, wearing out tires, and reaching such condition as to require replacement. There is the same fatal failure of proof as to this claim of impact on interstate movement of supplies as exists with respect to the speculative claims that passenger traffic has been affected.

In support of this proposition Petitioners cite *NLRB v. Bradford Dyeing Association* (1940) 310 U.S. 318, 326, 84 L.Ed. 1226; *NLRB v. Phoenix Mutual Life Insurance Co.* (CCA7-1948) 167 F.(2d) 983, 985, cert. denied, 335 U.S. 845, 93 L.Ed. 395; *NLRB v. Alloy Cast Steel Co.* (CCA6-1941) 117 F.(2d) 302, 303; and *NLRB v. American Potash & Chemical Corp.* (CCA9-1938) 98 F.(2d) 488, 495, cert. denied 306 U.S. 643, 83 L.Ed. 1043. These cases are all distinguished on the ground that in none of them had the labor dispute in question led to a strike or picketing which would permit an actual testing of the ultimate possible impact on interstate commerce which justifies federal regulation. The cases stress that the objective of the National Labor Relations Act is preventive and remedial, its purpose being to forestall labor strife that may affect commerce. We concede this and recognize that when claims of unfair labor practice are litigated before such practices have resulted in a strike, the jurisdiction of the National Labor Relations Board is necessarily to be tested on evidence as to the employer's direct involvement in commerce or his purchase or sale of substantial quantities of raw materials or finished products in such commerce, together with reasonable inferences as to the effect that a work stoppage would have upon commerce or the flow of goods in commerce. It is for this reason that the statutory definition of "affecting commerce" quoted above includes the phrase "or . . . tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

Counsel for the Board cite two additional cases,

*Virginian Railway Co. v. System Federation No. 40* (1937) 300 U.S. 515, 557, 81 L.Ed. 789 (involving the Railway Labor Act) and *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.* (1948) 334 U.S. 219, 236, 92 L.Ed. 1328 (involving the antitrust laws). These cases, likewise, merely recognize the preventive regulatory power of Congress to anticipate evils or to deal with individual cases of conduct which, in the aggregate, will have consequences within its powers, but say nothing to indicate that it is not essential to show real and present impact on commerce where the evils have actually occurred.[9]

But the definition of "affecting commerce" also contemplates the situation where a strike *has* resulted, as here, and in such a case inference and projection have no place. With respect to such a situation the definition reads that "The term 'affecting commerce' means . . . having led . . . to a labor dispute burdening or obstructing commerce or the free flow of commerce." 29 U.S.C. Sec. 152(7). Where the effect on commerce giving jurisdiction to the Board is claimed to arise from a present labor dispute which has eventuated in a total work stoppage and picketing—certainly the ultimate in possible impact on commerce—the test can no longer be speculative or conjectural, inquiring as to what "might" happen. *It has already happened!* Its

[9]Counsel suggest (Board Brief, p. 20) that the absence of a showing of actual disruption of service to and from the terminals merely "suggests" that substitute facilities "may have been" brought into play—and that that factor is immaterial for purposes of determining whether commerce has been affected. Again, this is speculation. If service was maintained only because other facilities were brought into play, that should have been proved—but it was not.

effects should be observable, and as a consequence, one asserting that the required effect on commerce exists must offer proof to that end. That is the situation here, where the strike and the concomitant picketing were in their twenty-fourth day when the trial closed. Yet Petitioners offered no proof whatsoever as to what the effects on commerce *had been*, and even now talk solely in terms of the future — what "would," or "could," or "might" be the consequences. Why guess when the facts were available? Failure to offer proof that commerce had been burdened suggests that no such proof was offered because none existed!

Difficulty with this point colors Petitioners' entire brief. They argue that "The Seattle Yellow Cab system is engaged in an industry affecting commerce" (Brief, p. 27) and that its general business "activities" affect commerce (Brief, p. 32). However, the statutory authority of the National Labor Relations Board is not stated in terms of the "industry" concerned or the business "activities" of the particular employer but is clearly confined to "any *unfair labor practice* (listed in section 8) affecting commerce." (Sec. 10(a)—emphasis supplied) See *NLRB v. Denver Building & Construction Trades Council* (1951) 341 U.S. 675, 683, 95 L.Ed. 1284 ("The *activities complained of* must affect interstate commerce"), and *Polish National Alliance v. National Labor Relations Board* (1944) 322 U.S. 643, 647, 88 L.Ed. 1509 (Congress has undertaken regulation of this field "to protect interstate commerce from adverse effects of *labor disputes*"). Also see *Con-*

*solidated Edison Co. v. National Labor Relations Board* (1938) 305 U.S. 197, 222, 83 L.Ed. 126.

Similarly, Petitioners and counsel for the Board repeatedly state that a labor dispute involving Yellow cabs "could" obstruct commerce (Pet. Brief, p. 23) or "could" logically or easily burden commerce (Pet. Brief, pp. 32, 37[10]); that a strike involving the cabs "might" interrupt or curtail the transfer of through passengers (Pet. Brief, p. 33); that any interruption in servicing incoming passengers at the rail, air, and steamship terminals "would" directly obstruct commerce (Pet. Brief, p. 35); that curtailment of taxicab service "would" necessarily tend to cast a burden on interstate travel (Board Brief, p. 14); that the impact of a strike involving the cab system on interstate commerce "would" perhaps be even more direct than in

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[10]At this point in Petitioners' Brief, and at page 15 of the brief of counsel for the Board, the case of *New York State Labor Board v. Wags Transportation System, Inc.* (1954) 130 N.Y.S.(2d) 731, aff'd 2[illegible] App. Div. 883, 134 N.Y.S.(2d) 603, is cited, with Petitioners placing a good deal of emphasis upon it. The case is clearly distinguishable, first because of the much greater volume of taxicab traffic incidental to the rail, ferry, steamship and air terminals of New York City. The court in that case was, therefore, dealing with literally millions of passengers in the direct flow of international and interstate travel, and as a consequence was careful to point out the extraordinary impact which a taxicab strike in New York City—and particularly one involving the Terminal System of which Wags was a part—would have upon such passenger traffic in interstate and foreign commerce. More specifically, the *Wags* case can be distinguished upon the grounds (1) that no strike had occurred there, so that the court was required to speculate on the probable effects on commerce of such an occurrence, and (2) that the cabs there involved were not driver-owned but were operated entirely by employed drivers, so that a work stoppage would probably have had serious impact on service to interstate travelers. Here, however, the strike occurred but the cabs are still operated by their owner-drivers. There is no room for speculation, and the absence of proof of any effect on commerce is proof that there was none.

the case of a local transit company (Board Brief, p. 16); and that the test is "the potential threat to interstate commerce in the event of a work stoppage" (Board Brief, p. 22). All these passages speak as if the strike here in question had never occurred. If all these consequences giving rise to jurisdiction in the Board "could," "might," or "would" occur, then there must have been some observable evidence of such effects on commerce during the twenty-four days which elapsed between the beginning of the strike and the conclusion of the proceedings in the trial court. There should have been witnesses who had seen or experienced these things and could testify to these effects. However, the record is clear that Petitioners did not put on a single witness to show that there had been any interruption in the services provided by the Yellow Cab companies to and from the air, rail and steamship terminals. In fact, it clearly appears that the only place where pickets were stationed was at Respondent's garage, far away from any of the terminals servicing interstate passengers. It must therefore be concluded that the consequences about which so much speculation is indulged in did not in fact occur and that all talk about the supposed burdens on commerce which "could" result from a taxicab strike are specious and completely invalid.

Much of this confusion perhaps results from failure to take in account the fundamental change which took place upon the dissolution of the old Yellow Cab Company in 1956. Prior to that time a strike might well have had impact upon the cab service available to interstate travelers. Now, however, since most of the 118

operating companies are driver-owned, a strike no longer has such results. The owners have continued to drive their cabs (R. 128, 214-215, 228-229) and service to the interstate terminals has been maintained and the commerce here in question – the interstate movement of travelers—has *not* been affected.

It should be noted, of course, that the failure of Petitioners to prove any impact on commerce applies equally to the transfer of through-passengers between the railroad terminals and the steamship docks. In other words, it must be assumed, on the record, that this through traffic was not in any way burdened or obstructed.

The underlying factor making speculation as to "possible" consequences of the strike utterly inappropriate here is that no temporary restraining order against picketing was ever obtained. In cases where such interim relief has been given it may still be necessary to draw inferences as to the "probable" impact of the strike upon commerce because no actual experience with picketing is available. But in this case Petitioners have at all times been free to picket as they wish, they in fact did so for twenty-four days, and yet they were able to produce no evidence that this labor dispute has affected Respondent's local activities in such a way as to burden or obstruct the free flow of interstate commerce.

In other words, since the jurisdiction of the National Labor Relations Board is limited to dealing with unfair labor practices affecting commerce, it is obvious that

when the practices concerned have resulted in a strike and picketing which have continued without judicial restraint for a reasonable time without observable effect on interstate commerce, the Board has no jurisdiction. It then follows that the courts of the States are empowered to accept jurisdiction of the matter. If in a case such as this one actual proof of impact on commerce is not to be required, the effort to draw a line between federal and state power over commerce might as well be abandoned because some theoretical or possible effect on commerce can be postulated in nearly every case.[11] If proper respect for state jurisdiction is to be preserved and our federal system of government maintained, a claim that commerce has been affected should require proof like any other jurisdictional fact. Such proof is entirely lacking here.

## CONCLUSION

We submit, for the reasons stated above, that the court below did not err in ordering the trial court to take jurisdiction of this case and in rejecting, thereby, Petitioners' contention that the National Labor Relations Board has exclusive jurisdiction of this proceeding. Counsel for the Board, at page 19 of their brief, set forth what they conceive to be the three

[11] Let us consider an extreme case, employing two arguments advanced by Petitioners, namely, (1) that interruption of out-of-state purchases of raw materials, gasoline, parts, etc., as a result of a labor dispute constitutes a burden on commerce, and (2) that anything over a few dollars is not *de minimis*. Assume there is a potter who runs a small kiln, fashioning products out of local clays which he sells entirely within the State of Washington. He owns a truck which he uses in the business and employs a man to drive it. He buys, locally, gasoline for the truck, tires and parts for it as needed, and paints for use in the pottery he

principal grounds for the decision below. We think these can be restated, more accurately, as follows:

(1) Respondent and the 118 operating taxicab companies are not engaged "in commerce" because only $1,436.55 of their combined revenues comes from business of that character, and said amount is *de minimis* and does not confer exclusive jurisdiction on the Board. *United States v. Yellow Cab Co.*, 332 U.S. 218.

(2) Both as to this "linkage" revenue *and* as to the larger sums derived from the carriage of passengers to and from railroad terminals, airports and docks, there was no showing that the labor dispute has impaired taxicab service at such terminals. This constitutes a failure of proof as to the claim that the conduct in question affects commerce, which is essential to Petitioners' challenge to the jurisdiction of the state courts.

We think this is a fair statement of the essential holding of the Supreme Court of the State of Washington, and that in so ruling the Court reached the proper result under the decisions of this Court as applied to the specific facts of this case.

Finally, we repeat that a grave constitutional question has now been raised. If this Court proclaims the exclusive jurisdiction of the federal government in a

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produces—all of which were produced outside the state—at a total cost of $1,500 per year. A union representing craftsmen working in large nearby potteries demands that he employ a member of the union and observe union hours of work. He refuses, the union pickets peacefully, and the truckdriver honors the picket line. Since the man must now both make the pottery and drive the truck, his imports of materials are cut in half. Since this would involve more than a few dollars, Petitioners would apparently argue that if he wished relief against the picketing, he would have to invoke the jurisdiction of the NLRB.

case of this kind because of a minute percentage of interstate-linked carrying of passengers, then it would appear that it is indeed basing its decision on the weakest conceivable link theory affecting the current of commerce.

Would it not then be approving a doctrine of the omnipotence of the nation state, in which all rights of individuals, communities, municipalites, states and, may we say, international bodies, spin off and are derived from a single and complete national authority?

What would such a decision do to the concept of a federal union in which heretofore the forbidden ground for the federal government is the residuum of sovereignty in the states, in spite of all the changing complexities of modern life?

If this court, out of concern for complete uniformity in the regulation of labor relations, overrules the lower court in this case, it may destroy the always delicate system of checks and balances so crucial to the functioning of our federal form of government. We hope that such a magnification of federal power at the expense of the rights of the states and the individual, which would surely pose a problem for strict and liberal constructionists alike, may be avoided.

Wherefore, Respondent respectfully prays that the judgment of the court below be affirmed.

Respectfully submitted,

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*Of Counsel:*
WARREN R. SLEMMONS
KENNETH A. COX

# APPENDIX A

Pertinent sections of the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. Secs. 141-187, are as follows:

Short Title and Declaration of Policy

Section 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947."

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all, recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to

protect the rights of the public in connection with labor disputes affecting commerce.

* * * *

Findings and Policies

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Definitions

Sec. 2. When used in this Act—

* * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * *

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as

a condition of employment as authorized in section 8(a)(3).

Unfair Labor Practices

Sec. 8. * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; . . .

* * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the

execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . .

* * *

Prevention of Unfair Labor Practices

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such case by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * *

Limitations

Sec. 13. Nothing in this Act, except as specifically provided herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

* * *

## APPENDIX B

Pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257, are as follows:

Sec. 701 (a) Section 14 of the National Labor Relations Act, as amended, is amended by adding at the end thereof the following new subsection:

"(c)(1) The board, in its discretion, may, by rule of decision or by publisned rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided,* That the Boafd shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

"(c)(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction."

* * *

# SUPREME COURT OF THE UNITED STATES

## SUPERIOR COURT OF STATE OF WASHINGTON FOR KING COUNTY ET AL. *v.* STATE OF WASHINGTON ON THE RELATION OF YELLOW CAB SERVICE, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON.

No. 76. Decided January 25, 1960.

PER CURIAM.

The judgment is reversed. *San Diego Building Trades Council et al. v. Garmon et al.*, 359 U. S. 236.